TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 394.

J. MARKHAM MARSHALL, WALTER T. ROSEN, AND RUDOLPH METZ, AS TRUSTEES, &c., PLAINTIFFS IN ERROR,

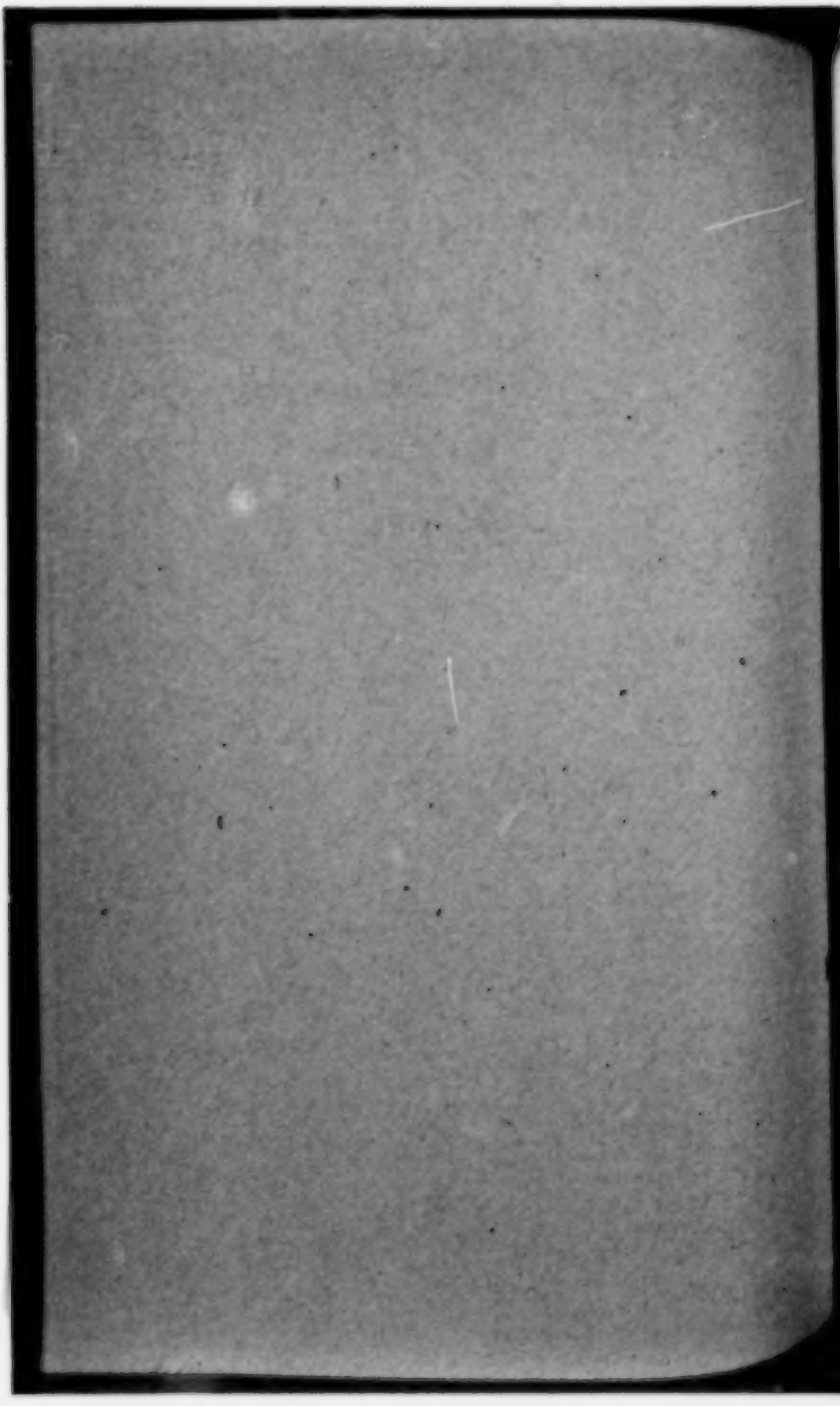
vs.

FRANCIS P. GARVAN, AS ALIEN PROPERTY CUSTODIAN.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED JUNE 14, 1920.

(27,751)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 19, 1920.

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1 United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee,

against

GROUP PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

Transcript of Record.

Root, Clark, Buckner & Howland, Proctors for Claimants-Appellants, Office & P. O. Address, 31 Nassau Street, Borough of Manhattan, City of New York.

1 United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

GROUP PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

Statement Under Rule IV, Section 1, Subdivision 6.

This proceeding was commenced on the 8th day of March, 1919, by Francis P. Garvan, as Alien Property Custodian, to secure possession of certain bonds and stocks which he claims as the property of the Munich Re-Insurance Company "an enemy not holding a license granted by the President" by filing a libel of information praying the Court to enter an order directing the Marshal to seize 2 the securities. An order was accordingly entered on the 8th day of March, 1919, directing such seizure and the securities were seized by the Marshal and are now in his possession. The order required all persons having any claim to the property to show cause why the property libelled should not be ordered by the Court, delivered by the Marshal to the Petitioner as Alien Property Custodian, to be by him held, administered and accounted for as provided by law. Monition was duly published and the Marshal's return filed. J. Markham Marshall, Walter T. Rosen and Rudolph Metz, as joint trustees for the protection of the policy holders of the Munich Re-insurance Company filed a claim to the securities on the 22nd day of March, 1919, and an answer to the libel on the 19th day of April 1919. No other claim was filed. The Alien Property Custodian thereupon, on the 19th day of April, 1919,

orally moved before Hon. A. H. Hand, District Judge, for judgment on the pleadings. The final decree granting the motion of libellant for judgment on the pleadings was filed on the 6th day of October, 1919. The notice of appeal was filed on the 16th day of October, 1919. There has been no change of parties since this proceeding was commenced.

3 *Petition for Appeal.*

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks, and Other Securities.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The claimants feeling themselves aggrieved by the decree made and entered in the above entitled cause on the 6th day of October, 1919, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Second Circuit, for the reasons set forth in the assignment of errors filed herewith, and they pray that their appeal be allowed and supersedeas granted and that citation be issued as provided by law directed to the above named libellant, commanding him to appear before the United States Circuit Court of Appeals for the Second Circuit to do and receive what may pertain to justice to be done in the premises, and that a tran-

4 script of the record, proceedings, and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, October, 1916.

ROOT, CLARK, BUCKNER & HOWLAND,
Proctors for Claimants, J. Marthon Marshall, Walter T. Rowe and Rudolf Metz, Trustees.

Order Allowing Appeal.

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks, and Other Securities.

The claimants having filed a petition for appeal from the decree made and entered herein on the 6th day of October, 1919, it is

Ordered that the said appeal of the said claimants from said decree to the United States Circuit Court of Appeals for the Second Circuit, be and the same hereby is allowed; and it is

Further ordered that the claimants file a bond in the sum of One thousand ($1,000) Dollars on or before the 16th day of October, 1919, the same to act as a supersedeas bond and also as a bond for costs on appeal; and it is

Further ordered that all proceedings herein be stayed saving those connected with the appeal herein, pending the final determination of said appeal or the further order of this Court.

Dated October 16, 1919.

JNO. KNOX,
United States Judge.

6

Notice of Appeal.

United States District Court, Southern District of New York

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925 and Other Bonds, Stocks and Other Securities.

Sirs:

Please take notice that the claimants herein hereby appeal to the United States Circuit Court of Appeals for the Second District from the final decree entered herein October 6th, 1919.

Dated, October 16, 1919.

HOWLAND,
Proctors for Claimants, J. Markham Marshall, Walter T. Rowe and Rudolf Metz, Trustees.

Office and Post Office Address, 31 Nassau Street, Borough of Manhattan, New York, N. Y.

7 To

Francis G. Caffey, Esq., United States Attorney, Proctor for Libellant and Appellee, U. S. Post Office Building, Borough of Manhattan, New York, N. Y.

Alex. J. Gilchrist, Esq., Clerk, U. S. District Court, Southern District of New York, U. S. Post Office Building, Borough of Manhattan, New York, N. Y.

Citation.

By the Honorable John C. Knox, One of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit.

To Francis P. Garvan, Alien Property Custodian, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 15 day of Nov. 2, 1919, pursuant to an order filed in the Clerk's office of the District Court of the United States for the Southern District of
8 New York, wherein J. Markham Marshall, Walter T. Rosen and Rudolf Metz, Trustees, are claimants of $50,000 par value United States Government 4% Registered Gold Bonds, maturing in 1925, and other bonds, stocks and other securities, and you are libellant to show cause, if any there be, why the decree in said order mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 16th day of October, in the year of Our Lord One Thousand Nine Hundred and Nineteen, and of the Independence of the United States the One Hundred and Forty-fourth.

JNO. KNOX,

Justice of the District Court of the United States for the Southern District of New York, in the Second Circuit.

9 United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

To the Honorable Judge of the District Court of the United States for the Southern District of New York:

Francis P. Garvan, as Alien Property Custodian, brings this proceeding, being in the nature of a libel of information against $50,000 par value U. S. Government 4% Registered Gold Bonds, maturing in 1925, and other bonds, stocks and other securities, a list of which is annexed hereto in Exhibit A, and says:

1. That your petitioner is the Alien Property Custodian of the United States duly appointed and qualified as such and is now and at all times hereinafter mentioned has been acting as such pursuant to the provisions of the Trading with the Enemy Act ap-
10 proved October 6, 1917, and the amendments thereto, and the executive orders and proclamations issued thereunder.

2. That your petitioner, acting as the Alien Property Custodian pursuant to the authority vested in him as aforesaid, did, on the 7th day of March, 1919, after investigation, determine that the Munich Reinsurance Company was an enemy not holding a license granted by the President, and that certain property against which this proceeding is brought set forth in Exhibit A to this libel of information, belonged to and owned by the said Munich Reinsurance Company, and was held for, by, on account of, or for the benefit of, the said Munich Reinsurance Company by Ladenburg, Thalmann & Co., a partnership doing business and having its principal office at 25 Broad Street, in the Southern District of New York, in the Borough of Manhattan and the City *and the City* and State of New York.

3. That on the said 7th day of March, 1919, and subsequent to such investigation and determination as aforesaid, the libellant, under the authority vested in his as aforesaid, did require from Ladenburg, Thalmann & Co., the National Park Bank that said securities set forth in Exhibit A be transferred, assigned and delivered over to him as such Alien Property Custodian, to be by him held, accounted for and administered according to law.

4. That on the said 7th day of March, 1919, and again on the 8th day of March, 1919, your libellant, under the authority vested

in him as aforesaid, but that the said Ladenburg, Thalmann
11 & Co. which now is said at all times mentioned herein has been in physical possession of said securities, did and does now wrongfully and contrary to law withhold from libellant such securities.

5. That said securities are now and at all times hereinafter mentioned were upon the premises aforesaid of Ladenburg, Thalmann & Co. at its principal office, said place being within the Southern District of New York and within the jurisdiction of this Court.

6. That for the statement of the grounds upon which this Court's jurisdiction depends, libellant says that this is a proceeding in the nature of a libel of information arising under Section 17 of the Trading with the Enemy Act approved October 6, 1917, by virtue of which this court has jurisdiction to make such orders and decrees as may be necessary to enforce the provisions of that Act.

7. That the provision of the Trading with the Enemy Act which this Court is asking to enforce is Section 7 (*c*) of the Trading with the Enemy Act, as amended November 4, 1918.

8. That all and singular the premises are true and within the jurisdiction of this Court.

Wherefore, libellant prays that this Court make and enter an order directing the Marshal of the Southern District of New York forthwith to seize and take possession of said securities mentioned in Exhibit A hereto and hold the same until further order
12 of this Court and that this Court make and enter an order requiring and citing all persons having or pretending to have any claim to the possession of said securities to appear at the time and place to be fixed in said order to show cause why the possession of said securities should not be delivered by the Marshal to the libellant to be by the libellant held, administered and accounted for as Alien Property Custodian according to the law for such other order or relief in the premises as to the Court shall seem just.

FRANCIS P. GARVAN,
As Alien Property Custodian, Libellant.

FRANCIS G. CAFFEY,
United States Attorney,
Proctor for Libellant.

13 EXHIBIT A.

$75,000. Atlantic Coast Line R. R. 4%, First Consolidated Mortgage bonds, maturing 1952.
14,000. Baltimore & Ohio R. R. 4½% Convertible Bonds, maturing 1933.
25,000. Chicago, Burlington & Quincy R. R. 4% General Mortgage bonds, maturing 1958.
125,000. German Imperial Government 5% Treasury Notes, maturing 1918.
50,000. United States 4% Registered Gold Bonds, maturing 1925.

STATE OF NEW YORK,
County and Southern District of New York, ss:

Francis P. Garvan, being duly sworn, says on oath that he is the Alien Property Custodian of the United States and the libellant in the above entitled proceeding; that he has read the foregoing libel and knows the contents thereof and that the same are true except as to such portions as are alleged on information and belief and as to these, is informed and believes the same to be true.

FRANCIS P. GARVAN.

Subscribed and sworn to before me this 8th day of March, 1919.

E. H. McCULLOCH,
Notary Public No. 92.

New York County Register's No. 10055.
Commission expires March 30, 1920.

14 *Order Directing Seizure of Securities.*

At a Stated Term of the District Court of the United States for the Southern District of New York Held in the U. S. Court House and Post Office Building, Borough of Manhattan, City of New York, on the 8th Day of March, 1919.

Present: Hon. John C. Knox, United States District Judge.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

Upon the libel in the above entitled proceeding verified March 8, 1919, after hearing Francis G. Caffey, United States Attorney for the Libellant and Van Vorst, Marshall & Smith, attorneys for Ladenburg Thalmann & Co. (appearing and submitting their rights to the Court) and Silas W. Howland and Emory R. Buckner of Root, Clark, Buckner & Howland, attorneys for J. Markham Marshall, Walter T. Rosen and Rudolf Metz, trustees for the Munich Reinsurance Company of Munich (appearing, stating the claims of said trustees to the securities mentioned in the libel and opposing the making of this order) and upon motion of Francis G. Caffey, United States Attorney, it is

15 Ordered that the Marshal of the Southern District of New York forthwith seize and take into possession all the securities mentioned in Exhibit A attached to the libel and hold the same until a further order of this Court.

Further ordered that all persons having or pretending to have any claims to the possession of said securities or any of them appear at a

term of this Court to be held at the United States Courts and Post Office Building, Borough of Manhattan, New York City, on the 24th day of March, 1919, at 10 o'clock in the forenoon thereof or as soon thereafter as counsel can be heard and then and there show cause, if any, why the possession of said securities should not be delivered by the Marshal to the libellant to be by the libellant as Alien Property Custodian held, administered and accounted for according to law and that the Clerk of this Court issue process accordingly.

JNO. C. KNOX,
U. S. D. J.

16 *Monition.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States to the Marshal of the Southern District of New York, Greetings:

Whereas, a libel of information has been filed in the District Court of the United States for the Southern District of New York on the 10th day of March in the year of our Lord one thousand nine hundred and nineteen, by Francis G. Caffey, Esq., United States District Attorney, on behalf of the Alien Property Custodian against

Bonds.

$75,000. Atlantic Coast Line R. R. 4% Consolidated Mortgage Bonds, maturing 1952;
14,000. Baltimore & Ohio R. R. 4½% Convertible Bonds, maturing 1933;
25,000. Chicago, Burlington & Quincy R. R. 4% General Mortgage Bonds, maturing 1958;
125,000. German Imperial Government 5% Treasury Notes, maturing 1918;
50,000. United States Government 4% Registered Gold Bonds, maturing 1925;

for the reasons and causes in the said libel mentioned and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in said property may be cited in general and special, to answer the premises; and all proceedings being had, that the said property may for the causes in the
17 said libel mentioned, be disposed of as prayed for in said libel.

You are therefore hereby commanded to attach the said property and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be disposed of as prayed for in the libel pursuant to the prayer of the said libel that they be and appear before the said court to be held in and for the Southern District of New York on the 24th day of March, 1919, at 10:30 o'clock in the forenoon of the same day if the same shall be a day of jurisdiction, otherwise on the next day

of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done on the premises, do you then and there make return thereof, together with this writ.

Witness, the Honorable Learned Hand, Judge of the said Court, at the City of New York, in the Southern District of New York, this 10th day of March, in the year of our Lord, one thousand nine hundred and nineteen, and of our Independence one hundred and forty-third.

ALEX GILCHRIST, JR.,
Clerk.

FRANCIS G. CAFFEY,
United States District Attorney.

18 *Marshal's Return.*

In obedience to the within Monition, I attached the

Bonds.

$75,000. Atlantic Coast Line R. R. 4% Consolidated Mortgage Bonds, maturing 1952;
14,000. Baltimore & Ohio R. R. 4½% Convertible Bonds, maturing 1933;
25,000. Chicago, Burlington & Quincy R. R. 4% General Mortgage Bonds, maturing 1958;
125,000. German Imperial Government 5% Treasury Notes, maturing 1918;
50,000. United States Government 4% Registered Gold Bonds, maturing 1925;

therein described, on the 10th day of March, 1919, and having given due notice as appears by proof of publication hereto annexed to all persons claiming the same, that this court will on the 24th day of March, 1919, inst. (if that day shall be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

THOS. D. McCARTHY,
United States Marshal.

Dated, March 24th, 1919.

I hereby certify that on the 10th day of March, 1919, at the City of New York, in my district, I served the within monition upon Ladenburg, Thalmann & Co., by exhibiting to Sidney H. March, as a member of the firm of Ladenburg, Thalmann & Co., at
19 No. 25 Broad Street, New York City, the within original, and at the same time leaving with him a copy thereof.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York City.

Dated March 24th, 1919.

Claim.

District Court of the United States, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks, and Other Securities.

And Now Walter T. Rosen, owner of the said $50,000 par value U. S. Government 4% registered gold bonds maturing in 1925, and other bonds, stocks and other securities more fully described in Exhibit A annexed to the libel herein, intervening for the
20 interest of himself, J. Markham Marshall and Rudolf Metz as co-trustees and joint owners of the said bonds, stocks and other securities, appears before this Honorable Court and makes claim to the said bonds, stocks and other securities as the same are attached by the Marshal under process of this Court, at the instance of Francis P. Garvan as Alien Property Custodian, and the said Walter T. Rosen avers that he and his said co-trustees and joint owners were in possession of the said bonds, stocks and other securities at the time of the attachment thereof, and that he and J. Markham Marshall and Rudolf Metz are the true and bona fide owners of the said bonds, stocks and other securities and that no other person is the owner thereof.

Wherefore they pray to defend accordingly.

WALTER T. ROSEN.

Sworn to and subscribed this 22nd day of March, 1919, before me.

CLINTON DE R. COMBES,
Notary Public, Nassau County.

Certificate filed in New York Co., 198, New York Reg. No. 10165. Commission Expires March 30, 1920.

ROOT, CLARK, BUCKNER & HOWLAND,
Proctors for Claimants.

Office and Post Office Address, 31 Nassau Street, Borough of Manhattan, New York City.

21 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Walter T. Rosen, being duly sworn, says that he is a co-trustee of Rudolf Metz and J. Markham Marshall, acting under a certain trust deed executed and delivered on March 13, 1911, by the Munich Re-insurance Company, a German corporation, under which trust

deed the bonds, stocks and other securities against which this suit has been commenced were held by him and his said co-trustees for the benefit of policy holders and creditors of said corporation in the United States; that for the purposes of this suit deponent is duly authorized by his said co-trustees to put in this claim.

WALTER T. ROSEN.

Sworn to before me this 22 day of March, 1919.

CLINTON DE R. COMBES,
Notary Public, Nassau County.

Certificate filed in New York County 198.
New York County Register's No. 10165.
Commission expires March 30, 1920.

22

Answer.

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks, and Other Securities.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

J. Markham Marshall, Walter T. Rosen and Rudolf Metz as trustees under a certain trust deed hereinafter described, owners and claimants of the $50,000 par value U. S. Government Registered Gold Bonds, maturing in 1925, and the other bonds, stocks and securities proceeded against by Francis J. Garvan, as Alien Property Custodian, in this proceeding, answer said libel of information and complaint as follows:

1. The claimants admit that the petitioner is the Alien Property Custodian of the United States, duly appointed and qualified as such, pursuant to the provisions of the "Trading with the 23 Enemy Act," approved October 6, 1917, and the amendments thereto, and the executive orders and proclamations issued thereunder.

Further answering the paragraph marked "1" of the libel of information the claimants deny that in making the demands of October 28, 1918, November 18, 1918, February 12, 1919, and March 7, 1919, hereinafter mentioned, the said petitioner was acting pursuant to the provisions of said Act but allege on the contrary that he was acting outside of and in abuse of the authority conferred upon him by said Act.

2. The claimants admit that the said petitioner made the determination specified in the paragraph marked "2" of the said libel of information, but deny that such determination was made after investigation and they deny that such determination was made pursuant to the authority of said "Trading with the Enemy Act."

3. On information and belief the claimants deny each and every allegation contained in the paragraph marked "3" of said libel of information.

4. The claimants admit that the said petitioner attempted to seize the securities as alleged in Paragraph 4 of the said libel of information, but deny that such attempted seizure was under the authority of the "Trading with the Enemy Act" or that the securities were withheld from the petitioner wrongfully or contrary to law.

5. The claimants admit all the allegations contained in paragraph marked "5" of the said libel of information.

24 6. The claimants admit the jurisdiction of this court, but deny each and every other allegation contained in the paragraph marked "6" of said libel of information.

7. The claimants deny each and every allegation contained in the paragraph marked "7" of said libel of information.

8. The claimants admit the jurisdiction of this court, but deny each and every other allegation contained in the paragraph marked "8" of said libel of information.

The Claimants further answering allege:

9. That by Chapter 205, Title Twenty-five of the General Statutes, Revision of 1902, of the State of Connecticut, approved June 11, 1901, and becoming effective on July 1, 1902, it was provided, among other things, as follows:

"Sec. 3500. Limitation of risks taken by company. No fire insurance company doing business in this state shall expose itself to loss on any one risk to an amount exceeding ten per cent. of its paid-up capital and surplus, but in determining the amount of said risk no portion thereof which shall have been reinsured in any corporation or corporations authorized to do insurance business in this state shall be included."

"Sec. 3509. Examination of affairs and officers. The insurance commissioner, either personally or by a committee appointed by him, consisting of one or more persons not directors, officers, or
25 agents of any fire or fire and marine insurance company doing business in this state, may at any time examine into the affairs of any fire or fire and marine insurance company incorporated by or doing business in this state. The officers or agents of such company shall exhibit its books to said commissioner or committee, and otherwise facilitate such examination; the commis-

sioner or committee may examine under oath the officers and agents of any such company in relation to its affairs. Said commissioner may publish the result of such investigation in one or more newspapers published in this state. In relation to the affairs of any company incorporated by or organized under the laws of any other state of the United States, he may, in lieu of such investigation, accept the certificate of the insurance commissioner or superintendent of such state, as to its condition. Whenever the commissioner shall ascertain that the assets of any fire or fire and marine insurance company incorporated by this state, after deducting for re-insurance and its other proper liabilities, excepting capital, amount to less than three-fourths of its capital stock, if it have a stock capital, or in the case of a mutual company, if the assets, less the unsettled claims and other absolute liabilities, amount to less than three-fourths the sum requisite for reinsurance, he shall call upon it to make up such deficiency within such reasonable time as he shall fix, and on failure to comply with such requirement shall bring his petition to a judge of the superior court, praying for an injunction restraining said company from the further prosecution of the business of making or renewing insurance until said
26 deficiency is made up; and if, upon a hearing before said judge, after such reasonable notice to such company as may be ordered, the allegations contained in such petition shall be found true, such judge shall issue such injunction."

10. That by Chapter 206, Title Twenty-five of the General Statutes, Revision of 1902 of the State of Connecticut, approved June 11, 1901, and becoming effective on July 1, 1902 it was provided, among other things as follows:

"Sec. 3518. Term 'Foreign insurance company' defined. The term 'foreign insurance company' shall include any company corporation, association, partnership, or individual of any foreign country doing insurance business in this state."

"Sec. 3519. When foreign fire insurance company may transact business here. No foreign fire insurance company shall take risks in this state unless it has a cash capital of two hundred thousand dollars, and shall have made a deposit with the treasurer of this state or with the proper officer of some other state of not less than two hundred thousand dollars in securities authorized by law for investments by savings banks, in trust for the benefit of its policyholders in the United States; and no policy issued by such company to any citizen of this state shall be invalidated by the occurrence of hostilities between the government of the United States and the government under the laws of which it was organized."

27 "Sec. 3520. Information to be furnished commissioner. Every foreign insurance company shall, before admission to do business in this state, furnish to the insurance commissioner a copy of its charter or articles of association, of its last annual report made in the country where it was organized, and the cer-

tificate of the officer holding in trust said deposit of two hun
thousand dollars, stating the manner in which the same is inv
and the purposes for which the same is held; and it shall fur
annually to the insurance commissioner, a statement of the
dition of its affairs in the United States, in such form as he
require."

"Sec. 3521. Amount of capital how estimated. The capita
every such foreign insurance company shall, for all the purpos
the insurance laws of this state, be the aggregate value of its m
or securities deposited as aforesaid, and all sums loaned on
estate security in any state in the United States, in conform
with the laws of such state providing for the investment of
assets of insurance companies therein, and all other assets in
United States in which fire insurance companies organized u
the laws of this State may invest; provided such real estate
curities and assets shall be held in the United States by tru
who are citizens of the United States approved by the insur
commissioner, for the benefit of all its policyholders and credi
in the United States, after making the same deduction from s
aggregate value for losses and liabilities in the United Sta
28 and for premiums upon risks therein not expired, as is
thorized or required by the laws of this state, or by the
ulations of its insurance department, with respect to fire insur
companies organized under the laws of this state."

"Sec. 3522. Appointment of trustees. The trustees referred
in Sec. 3521 shall be appointed by the directors of such compa
and a certified copy of the vote by which they are appointed
of the deed of trust shall be filed in the office of the insurance c
missioner; and he may examine such trustees or the agents of s
company, under oath, and its assets, books, and accounts, in
same manner as he may examine the officers, agents, assets, bo
and accounts, of any company authorized to do fire insurance b
ness in this state."

"Sec. 3523. Conditions precedent to transaction of business.
foreign insurance company, or agent or attorney thereof, sh
transact the business of fire insurance in this state until such c
pany shall have complied with the laws of this state relative to f
eign insurance companies, and received a license or certificate
authority from the insurance commissioner; nor shall such c
panies make contracts of insurance on property in this state
cept through lawfully constituted and licensed resident agents."

"Sec. 3524. Limitation of risks. No foreign insurance compa
shall insure against loss by fire or inland navigation, nor exp
itself to any such loss by any one risk, for any gre
29 amount in proportion to its capital than companies wh
are organized under the laws of this state."

"Sec. 3525. License to transact business. When a foreign ins
ance company shall have complied with the provisions of law

lating to such companies, and the insurance commissioner is satisfied that it is solvent in the United States, he may issue to it a license to transact business in this state, upon the payment of thirty dollars for filing a certified copy of its charter or deed of settlement and annual fees as follows: License fee, fifty dollars; fee for filing statement, twenty dollars; and two dollars for each agent's certificate of authority."

11. That at all the times hereinafter mentioned prior to July 1, 1918, the said statutes of the said State of Connecticut were in full force and effect.

12. That the provisions of said Sections 3580 and 3589 of the statutes of Connecticut hereinabove set forth were incorporated in and are a part of the General Statutes of Connecticut, Revision of 1918, in effect July 1, 1918, and are therein numbered Sections 4078 and 4086, respectively, of Chapter 240 of Title 35 of said Revision. That the provisions of said Sections 3518, 3519, 3520, 3521, 3522, 3523, 3524 and 3525 of said Connecticut Statutes hereinabove set forth were incorporated in and are now a part of the said General Statutes of Connecticut and are therein numbered Sections 4101, 4102, 4103, 4104, 4105, 4106, 4107 and 4108 respectively, of Chapter 242 of Title 35 of said Revision; that at all the times hereinafter mentioned the said provisions of said Statutes of Connecticut were and now are in full force and effect.

13. That at all the times hereinafter mentioned the Munich Re-Insurance Company was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Bavaria, Empire of Germany, and that in or about the month of March, 1911, said Munich Re-Insurance Company commenced to transact business in the State of Connecticut and thereby became subject to the Statutes aforesaid.

14. That for the purpose of establishing a suitable capital within the United States pursuant to the provisions of said Section 3521 of the Statutes of the State of Connecticut and thus enabling it to insure substantial risks without violating the provisions of said Sections 3580 and 3524 of said Statutes, and for the purpose of securing the policy holders and creditors in the United States of the said Company pursuant to the said statutes, the Munich Re-Insurance Company on or about March 13, 1911, duly executed and delivered a certain trust deed wherein and whereby Ernst Thalmann, Isaac N. Seligman and Hermann Sieleken, all citizens of the United States and residents of the State of New York, were appointed trustees thereunder. A copy of said trust deed is hereto annexed, marked "Exhibit 1" and made a part hereof. That the said trustees accepted the trusts created by said trust deed and filed the said trust deed with the Insurance Commissioner of the State of Connecticut. That the claimants are the duly appointed successors of the trustees originally named in said trust deed and that the said trust deed is now in full force and effect.

15. That pursuant to the terms of said trust deed and of said Statutes the said Munich Re-Insurance Company assigned, transferred and conveyed to the said trustees therein named, certain cash, bonds and stocks to be held by them in trust for its policy holders and creditors in the United States and that the securities proceeded against in this action *and* a part of the securities so assigned, transferred and conveyed.

16. That the said Munich Re-Insurance Company has engaged in the insurance business in the said State of Connecticut and in other states of the United States and entered into many agreements, treaties and contracts re-insuring the risks assumed by various persons, firms, associations and corporations in the United States. On information and belief, that the persons, firms, associations and corporations in the United States who have thus re-insured risks with the said Munich Re-Insurance Company have relied upon the protection and security afforded by the said trust deed and the property assigned transferred and conveyed to the said trustees pursuant thereto, the terms of said trust deed having been made public through filing a copy thereof with the Insurance Commissioner of the State of Connecticut, and the amount and character of the securities held by the trustees having been made public from time to time by publication of the facts with respect thereto in the annual statements of said Munich Re-Insurance Company and in the annual reports of said Insurance Commissioner.

32 17. That the cash and securities so assigned, transferred and conveyed to the said trustees, at all times herein mentioned were in the possession, custody and control of the said trustees.

18. The claimants allege on information and belief that many claims against the Munich Re-Insurance Company by policy holders and creditors in the United States have accrued, are now outstanding and unpaid. That claimants cannot state the exact amount of these claims but allege, on information and belief, that the amount of the said claims which have not only accrued but as to which demands for payment have been presented to the said company aggregate more than $400,000. That the amount of said claims which have thus accrued can be ascertained only by an inspection of the books of said company which the claimants allege, on information and belief, are in the possession of the Alien Property Custodian.

19. The claimants allege on information and belief that the said Munich Re-Insurance Company has heretofore entered into a large number of valid agreements, treaties and contracts with persons, firms, associations and corporations in the United States re-insuring risks assumed by such persons, firms, associations and corporations amounting altogether to a very large total sum. The claimants are unable to set forth exact figures as to the amount of these risks for the reason that they have not access to the books and records of the said Munich Re-Insurance Company. That under the terms

and provisions of said agreements, treaties and contracts the said Munich Re-Insurance Company is liable for any and all losses occurring or which may have occurred during the periods covered by such agreements, treaties and contracts, and claims based upon such losses may be lawfully enforced by persons within the United States notwithstanding the termination of such agreements, treaties and contracts. That by reason of these facts it is not now possible to ascertain or state the full amount of claims against the said company which may be lawfully asserted and enforced by policy holders and creditors of the said Munich Re-Insurance Company within the United States. But the said claimants allege, on information and belief, that the total amount of the risks thus insured against is far in excess of the total value of the said cash and securities so held by the said trustees and that the claims arising under such agreements, treaties and contracts, which have accrued or which may accrue and become and be enforcible in favour of persons within the United States against the said Munich Re-Insurance Company and thus entitled to the security of the said trust funds may aggregate an amount equal to or in excess of the total value of all the said trust funds, including the securities labelled in this proceeding.

20. That the policy holders and creditors in the United States of the said Munich Re-Insurance Company have a claim on the trust fund held by the said claimants under the said trust deed for the security and protection of their claims against said Company. That by reason of the character of the obligations assumed by said Munich Re-Insurance Company as aforesaid, it is not now possible and in all probability it will not be possible within six months after the end of the war for the said policy holders and creditors to ascertain the amount of their claims against said Munich Re-Insurance Company and to demand payment thereof from the said Company.

21. That on or about April 25, 1917, the Insurance Commissioner of the State of Connecticut prescribed certain rules for the purpose of regulating the business of branch establishments of insurance companies corporated under the laws of the German Empire and which were engaged in the transaction of business in the United States and had their principal office in the State of Connecticut. That the said rules were so prescribed under the authority of a Presidential Proclamation promulgated April 6, 1917, a copy of which proclamation is hereto annexed marked "Exhibit 2" and made a part hereof. The said rules provide, among other things, as follows:

"7. The United States Trustees shall not disburse any funds or make any investments, or sell, remove or transfer any securities without previous notice in writing to the Insurance Commissioner as aforesaid, at the above address. Such funds and securities shall be subject to the joint control of said Commissioner, or some one whom he may designate in writing and the parties, who but for

these rules and regulations would be entrusted with their custody. A copy of these rules shall be furnished to each of said Trustees."

22. Thereafter the claimants in this action duly received from the said Commissioner a true copy of the said rules. A copy of said rules is hereto attached marked "Exhibit 3" and made a part hereof.

35 23. That prior to October 28, 1918, A. Mitchell Palmer was duly appointed Alien Property Custodian under the provisions of the Act of Congress entitled "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued pursuant thereto, and duly qualified and acted as such Alien Property Custodian.

24. That on or about October 31, 1918, the said A. Mitchell Palmer, as Alien Property Custodian, served on Gustave A. Zieman, Assistant Secretary of said Munich Re-Insurance Company at the City of Hartford in the State of Connecticut, a demand dated October 28, 1918, and addressed to Carl Schreiner, Manager, of said Munich Re-Insurance Company and the said claimants, as trustees. By such demand the Alien Property Custodian required the trustees to turn over to him the property held in trust "in excess of the amount required for the purposes of such trust." A copy of said demand marked "Exhibit 4" is hereto annexed and made a part hereof.

25. That thereafter on November 11, 1918, the said claimant trustees held a meeting for the purpose of considering the demand of the Alien Property Custodian. That at said meeting the trustees found it impossible to ascertain the amount of "securities or properties in excess of the amount required for the purposes of said trust," as required by the demand of the Alien Property Custodian and it was therefore impossible to comply with said demand in accordance with the terms thereof. The trustees thereupon determined to seek advice of counsel as to their duty in the premises and they
36 notified the Alien Property Custodian of this determination.

26. That on or about November 18, 1918, the said A. Mitchell Palmer as Alien Property Custodian served on the said claimant trustees a demand under date of November 18, 1918. By such demand the Alien Property Custodian required the trustees to turn over to him all property therein determined by him to belong to the Munich Re-Insurance Company. A copy of said demand marked "Exhibit 5" is hereto annexed and made a part hereof.

27. The said claimant trustees consulted with Elihu Root and were advised by him that they were not at liberty to comply with the said demand. A copy of said opinion is hereto annexed marked "Exhibit 6" and made a part hereof.

28. That thereafter and during the month of December, 1918, the claimant trustees notified the Insurance Commissioner of the State of Connecticut of the demand of the said A. Mitchell Palmer as Alien Property Custodian and requested him to exercise the powers con-

ferred upon him by the said statutes of the State of Connecticut to examine into the affairs of the said Munich Re-Insurance Company with a view to determining whether there was any excess of securities held by the said claimant trustees over the amount which the said statutes required them to hold. A copy of said letter is hereto annexed marked "Exhibit 7" and made a part hereof. That the said Insurance Commissioner has made no reply to the said request of the claimants.

29. That on or about February 12, 1919, the said A. Mitchell Palmer served upon the claimant trustees a paper by which he purported to seize and demand the payment, assignment and delivery of all of the properties held in trust by them as aforesaid, including as a part thereof the properties described in this libel of information herein. A copy of said demand marked "Exhibit 8" is hereto annexed and made a part hereof.

30. The claimants allege, on information and belief, that on March 7, 1919, the said libellant demanded from Ladenburg, Thalman & Co., that they transfer, assign, deliver and pay over to him as Alien Property Custodian the securities and properties held by said claimants under said trust deed, to be by him administered and accounted for as provided by law. A copy of said demand marked "Exhibit 9" is hereto annexed and made a part hereof.

31. That under and by virtue of the said deed of trust (Exhibit 1) and the provisions of the Statutes of the State of Connecticut hereinabove set forth, the claimant trustees at all the times herein mentioned were and now are the holders of a lawful right in the nature of security in the property so assigned, transferred and conveyed to them for the payment and satisfaction of the claims of the policy holders and creditors in the United States hereinabove described, and that said property by the terms of said trust deed was to be disposed of and appropriated to the payment and satisfaction of the claims of said policy holders and creditors. That by reason of these facts the claimant trustees, under the express provisions of Section 8 (*a*) of said "Trading with the Enemy Act" have a right to continue to hold the property libelled in this proceeding.

32. That under the provisions of the said "Trading with the Enemy Act" a person whose property is sought to be seized by the Alien Property Custodian, is entitled to notice and a fair hearing to defend his rights. That the said Alien Property Custodian has not at any time notified the said claimant trustees that he intended to hold an investigation for the purpose of determining whether the securities held by the said claimant trustees under said trust deed and against which this proceeding was brought, were owing or belonging to or held for, on account of or on behalf of or for the benefit of an enemy or ally of enemy not holding a license granted by the President. The said Alien Property Custodian has not at any time given the claimant trustees an opportunity of presenting to him for his consideration the claims of the said claimant trustees

in respect to the said securities or any evidence in support of their said claims. That any determinations made by the said Alien Property Custodian in respect to said securities have therefore been made arbitrarily, in that said claimant trustees have been deprived of any notice of an investigation to be held in the premises by the Alien Property Custodian and have been deprived of an opportunity of a fair hearing or of presenting evidence to the Alien Property Custodian in support of their claims to said securities.

33. The claimants allege that the action of the said Alien Property Custodian in making the said demands of October 28, 1918, November 18, 1918, February 12, 1919, and March 7, 1919, hereinbefore referred to was arbitrary, in excess of his authority under the "Trading with the Enemy Act" or under the said proclamations and executive orders relating thereto, and that the said action was therefore void because an investigation of the facts such as is required by Section 7 (*c*) of the said "Trading with the Enemy Act" could not have failed to disclose to the Alien Property Custodian the facts hereinabove set forth, viz.: That the said trust funds including the funds libelled in this proceeding were in fact and in law held by the said claimant trustees not for the benefit of the Munich Re-Insurance Company as alleged by the said Alien Property Custodian but for the benefit of policy holders and creditors within the United States pursuant to the Statutes of the State of Connecticut and the trust deed herein referred to and set forth. That neither under the said Statutes of the State of Connecticut nor under the said trust deed nor under the provisions of the said "Trading with the Enemy Act" could the claimant trustees have turned over a single dollar's worth of the said trust funds to the said Munich Re-Insurance Company; that the said determinations of the said Alien Property Custodian that the securities against which this libel of information was filed belonged to and are held for, by, on account of, on behalf of or for the benefit of the Munich Re-Insurance Company are unsupported by any evidence and are directly contrary to the previous determination under date of October 28, 1918.

34. That the said Alien Property Custodian at the times of the several demands hereinbefore referred to, knew that the claimant trustees held a lawful right in the nature of security in the bonds and stocks herein libelled; that under the provisions of Section 8 (*a*) of said "Trading with the Enemy Act" the said claimant trustees were and are expressly authorized to continue to hold the said bonds and stocks; that the said Alien Property Custodian had no power or authority to require the said claimant trustees or any other person to transfer, assign, deliver and pay over to him the said bonds and stocks, and that in making the said demands of October 28, 1918, November 18, 1918, February 12, 1919, and March 7, 1919, the said Alien Property Custodian acted in excess of and in abuse of the power and authority conferred upon him by the said Act.

35. That all the facts with respect to the securities herein libelled and the trust deed under which the said securities were held by the claimant trustees were and are undisputed and were and are known to the said Alien Property Custodian and the said determinations of the said Alien Property Custodian were determinations of a question of law.

36. The claimants allege that the securities herein libelled are not money or property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, and that therefore, the Alien Property Custodian was without power, authority or jurisdiction, even after investigation to make the determinations in respect to said securities hereinbefore set forth and to require the said claimant trustees or any other person to convey, transfer, assign, deliver and pay over to him the said securities.

41 37. The claimants further allege that on or about March 4, 1919, the said claimants J. Markham Marshall and Rudolf Metz brought an action for an accounting in the Supreme Court of the State of New York, New York County, in which the Munich Re-Insurance Company, A. Mitchell Palmer as Alien Property Custodian, the claimant Walter T. Rosen, as trustee under the said trust deed, all persons, firms, associations and corporations known to have claims against the Munich Re-Insurance Company, and all unknown persons, firms, associations and corporations who, individually or in any fiduciary capacity, as policy holders or otherwise had or claimed to have, or had had such business transactions with the said Munich Re-Insurance Company that they might then have or at some future time might have, or might claim to have, some right against the claimants as such trustees, or some right or interest, legal or equitable, against, in or in respect of the said trust fund, were named as defendants. That the complaint in said actions set out the account of said claimants as trustees and prayed that the said account be passed by and under the direction of the said court and that the said court by its decree discharge the said claimants as such trustees from all liability, responsibility and accountability for their acts and doings as such trustees and that the said court make its decree as to the disposition of the funds and assets in the control of the said trustees, and the complaint further prayed that the court instruct the said claimants as to whether, pending the judicial settlement of their accounts they should transfer, assign, deliver and pay over the moneys, securities and property in their hands and the properties herein libelled to the said A. Mitchell Palmer as Alien Property Custodian. A copy of said com-
42 plaint is hereto annexed marked "Exhibit 10" and made a part hereof.

38. That on March 3, 1919, the said claimants delivered a copy of the summons and complaint in the said action for an accounting to Alexander Kenney, an assistant counsel of the Alien Property Custodian in New York City and thereafter and on or about March

4, 1919, requested the Alien Property Custodian to appear voluntarily in the said action. That the said Alien Property Custodian has made no reply to the claimants' said request.

39. That the securities herein libelled are trust funds. That all the interests therein are equitable in their nature. That the amounts of the claims in respect of said funds cannot be ascertained and the respective rights and interest therein cannot be determined, and the trustees cannot be discharged or protected in the administration of said fund except by the decree of a court of equity in a suit for an accounting and discharge in the nature of the said suit heretofore commenced by the trustees.

40. That all and singular the premises are true.

Wherefore claimants pray that said libel of information may be dismissed with costs and that the order heretofore *hade* herein directing the Marshal of the Southern District of New York to seize and take possession of the securities mentioned in Exhibit A annexed to said libel of information be vacated; that the court make and enter an order restoring the said securities to the custody of these claimants, and for such other order or relief in the premises
43 as to the court shall *deem* just.

J. MARKHAM MARSHALL.
WALTER T. ROSEN,
RUDOLF METZ,
Claimants.

ROOT, CLARK, BUCHNER & HOWLAND,
Proctors for Claimants.

Office & P. O. Address, 31 Nassau Street, Borough of Manhattan, City of New York.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Walter T. Rosen, being duly sworn, says that he is one of the claimants named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated on information and belief and that as to those matters he believes it to be true.

WALTER T. ROSEN.

Sworn to before me this 10th day of April, 1919.

CLINTON DE R COMBES.
[SEAL.] *Notary Public, Nassau County.*

Certificate filed in New York County 198; New York County Register's No. 10165.
Commission expires March 30, 1920.

44 EXHIBIT 1.

This Indenture, made the thirteenth day of March in the year one thousand nine hundred and eleven, between the Munich Re-Insurance Company of Munich, in the Kingdom of Bavaria, Germany, hereinafter called the "Company," party of the first part, and Mr. Ernest Thalmann, Mr. Isaac N. Seligman and Mr. Hermann Sielcken, of New York, all citizens of the United States, parties of the second part.

Witnesseth:

Whereas it was enacted in and by a certain Act or Acts of the Legislature of the State of Connecticut, entitled, "Laws relating to Insurance and Insurance Companies, General Statutes Chapter 206, especially relating to Foreign Insurance Companies" that under:

"§3521. Amount of Capital Now Estimated. The capital of every such foreign insurance Company shall, for all the purposes of the insurance laws of this state, be the aggregate value of its money or securities deposited as aforesaid, and all sums loaned on real estate security in any state in the United States, in conformity with the laws of such state providing for the investment of the assets of insurance companies therein, and all other assets in the United States in which fire insurance companies organized under the laws of this state may invest; provided such real estate securities and assets shall be held in the United States by trustees who are citizens of the
45 United States approved by the insurance commissioner for the benefit of all its policyholders and creditors in the United States, after making the same deduction from such aggregate value for losses and liabilities in the United States, and for premiums upon risks therein not expired as is authorized or required by the laws of this state, or by the regulations of its insurance department, with respect to fire insurance companies organized under the laws of this state."

and that under:

"§3522. Appointment of Trustees. The trustees referred to in §3521 shall be appointed by the directors of such company, and a certified copy of the vote by which they are appointed and of the deed of trust shall be filed in the office of the insurance commissioner; and he may examine such trustees or the agents of such company, under oath, and its assets, books, and accounts in the manner as he may examine the officers, agents, assets, books, and accounts, of any Company authorized to do insurance business in this State."

And Whereas the said Company is a foreign Insurance Company, duly organized and existing under the laws of the Kingdom of Bavaria, Germany, and carrying on the business of re-insurance in the said State of Connecticut and elsewhere in the United States, by the Resident Manager in said City of Hartford; Now therefore,

to the end that the aforesaid statute of the State of Connecticut may be fully complied with:

46 Know all Men by these Presents that the said Company doth hereby constitute and appoint Mr. Ernest Thalmann, Mr. Isaac N. Seligman, and Mr. Hermann Sieleken of New York, the parties hereto of the second part, and their successors appointed in the manner hereinafter provided, Trustees for the purposes hereinafter stated, and upon the trusts, covenants, agreements, and provisions hereinafter declared and set forth.

First. The said Trustees shall receive, hold, possess, and safely keep all assets and property of every kind and description which shall from time to time hereafter be delivered to them by the Company, the same to be held, used and appropriated to and for satisfying the purposes in the act of the Legislature above mentioned to be held in trust for the Company.

Second. The Trustees shall give proper receipts and vouchers to the Company for all the property so from time to time delivered to them by the Company, and the said Trustees shall keep a full and accurate record, inventory, and account of the said property as received, and of all their tranactions in relation to the same, which record, inventory, and account shall at all times be open to the inspection of the Company, its duly authorized agent or agents; and the said Trustees shall from time to time, as they may be required, render and deliver to the Company in such form as its Board of Directors may from time to time prescribe, a true, full, and just account of the business of the said trust, and of all the property held under the same.

47 Third. The Trustees shall have power (with the previous consent of the Company), to invest and re-invest from time to time the property so as aforesaid delivered in trust, and to this end they shall have power (with such consent as aforesaid) to make all necessary sales, conveyances, assignments, and transfers, and no purchaser shall be obliged to see to the application of the purchase money. It shall be the duty of the Trustees from time to time to make such investments, purchases, sales, conveyances and assignments as they may be requested to make by the said Company. The current interest and income of the said trust property, as it accrues and is received by the Trustees, shall be paid by them to the Company through its bankers in the City of Hartford.

Fourth. If at any times debts and liabilities for the security of which this trust is created, shall accrue and become due and payable by the Company, and shall not be otherwise satisfied and paid, the Trustees shall have power to appropriate so much of the said trust property as may be necessary to the payment and satisfaction thereof, but no alleged debt or liability shall be so paid or satisfied unless and until the amount and validity of the said alleged debt or liability in each case shall have been admitted by the Company,

or until the validity and amount thereof have been established by the claimant in due course of law.

Fifth. The Trustees shall permit the Company from time to time, if and as occasion shall require, to withdraw such proportion of the said trust property as the Company may require for the purpose of making a deposit in any other State or States as a basis for carrying on the business of insurance in such State or States, in compliance with the law thereof, and shall deliver to the Company so much of the trust property as may be required for such purpose.

Sixth. All vacancies occurring in the trust hereby created, from any cause whatever, shall and may be filled by the appointment by the Company of a successor or successors to the said trust, and the Trustee so appointed, upon accepting such appointment, without further act or deed shall have and possess all the estate, rights and powers conferred upon the said Trustees, respectively named in this instrument, in and by the provisions thereof, and shall be subject to all the duties imposed upon such Trustees respectively.

Seventh. The said Trustees, parties of the second part, and their successors, may at any time resign, and the vacancy created by every such resignation shall and may be filled by the Company, and the said Company shall have the power at any time, from time to time, without assigning any cause therefor, to remove any one or more of the said Trustees or their successors, by notice of such removal in writing, and thereupon the said Company shall and may, at any time or times thereafter, appoint a successor or successors to the said Trustee or Trustees so removed.

Eighth. The said Trustees and their successors shall be liable respectively only for their own neglect and misfeasance, and not for the neglect or misfeasance of each other.

Ninth. After making due provision for the purposes aforesaid and subject to the provisions hereinbefore contained, the Trustees shall stand possessed of the said trust fund, at the control and subject to the order of the Company, and shall and will use and dispose of the same as the Company may direct or appoint. But it is hereby expressly declared and provided, that until all the outstanding liabilities and obligations of the Company, absolute or contingent, to policyholders or creditors in the United States, are fully paid and discharged, the said trust fund, or so much thereof as may be necessary to cover the outstanding liabilities shall remain in the possession of the said Trustees, for the security and protection of the said policyholders and creditors, anything herein contained to the contrary notwithstanding.

Tenth. The Company reserves to itself the right hereafter to add to, alter, modify, or revoke the trusts, conditions, and powers hereby declared, imposed, or conferred, in such manner as its Board of Directors may by resolution determine, and as shall be according to

law, provided that the rights of its policyholders and creditors in the United States shall not be thereby impaired.

In witness whereof, the Company have hereunto affixed their common seal, and the said parties hereto of the second part, have hereunto set, their hands and seals the day and year first above written.

On behalf of the

MUNICH RE-INSURANCE COMPANY.

Sig.: CARL THIEME,
President.

" PAUL SZELINSKI,
Secretary.

50 UNITED STATES CONSULATE GENERAL,
Munich, Bavaria, ss:

On this 13th day of March, 1911, before me personally came Mr. Carl Thieme, President, and Mr. Paul Szelinski, Secretary of the Munich Re-Insurance Company with whom I am personally acquainted, who being by me duly sworn said that they resided in the City of Munich; that Mr. Thieme was President and Mr. Szelinski was Secretary of the Munich Re-Insurance Company, that they knew the corporate seal of said Munich Re-Insurance Company, that the seal affixed to the annexed conveyance was such corporate seal, that it was affixed by order of the Board of Directors of said Munich Re-Insurance Company and that they signed their names thereto by the like order as President and Secretary of said Munich Re-Insurance Company.

Witness my hand and the seal of this Consulate General the day and year first above given.

(Signed) ABRAHAM SCHLESINGER,
Vice & Deputy Consul General of the United
[L. S.] *States of America at Munich, Bavaria.*

No. 241.
Fee M 8.50.
— $2.00.

51 EXHIBIT 2.

[Agencies in the United States of German Insurance Companies.]

By the President of the United States of America.

A Proclamation.

Whereas, certain insurance companies, incorporated under the laws of the German Empire, have been admitted to transact the business of insurance in various States of the United States, by means of separate United States Branches established pursuant to the laws of such States, and are now engaged in business under the

supervision of the Insurance Departments thereof, with assets in the United States deposited with Insurance Departments or in the hands of resident trustees, citizens of the United States, for the protection of all policyholders in the United States;

And whereas, the interests of the citizens of the United States in the protection afforded by such insurance are of great magnitude, so that it is deemed to be important that the agencies of such companies in the United States be permitted to continue in business;

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German Insurance Companies now engaged in the transaction of business in the United States pursuant to the laws of the several States are hereby authorized and permitted to continue the transaction of their business in accordance with the laws of such States in the same manner and to the same extent as though a state of war did not now exist; provided, however, that all funds of such establishments now in the possession of their managers or agents, or which shall hereafter come into their possession, shall be subject to such rules and regulations concerning the payment and disposition thereof as shall be prescribed by the insurance supervising officials of the State in which the principal office of such establishment in the United States is located, but in no event shall any funds belonging to or held for the benefit of such companies be transmitted outside of the United States nor be used as the basis for the establishment directly or indirectly of any credit within or outside of the United States to or for the benefit or use of the enemy or any of his allies without the permission of this Government.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this sixth day of April in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States the one hundred and forty-first.

WOODROW WILSON.

[SEAL.]

By the President:

ROBERT LANSING,

Secretary of State.

[No. 1366.]

EXHIBIT 3.

State of Connecticut.

Insurance Department.

Hartford, April 25, 1917.

Whereas, the President of the United States, on April 6th, 1917, authorized and permitted the Branch establishments of such insur-

ance companies incorporated under the laws of the German Empire, as were then engaged in the transaction of business in the United States, pursuant to the laws of the several states, to continue the transaction of their business in accordance with the laws of such states, in the same manner and to the same extent as though a state of war did not exist, provided that all funds of such establishments, then in the possession of their managers or agents, or which should thereafter come into their possession, should be subject to such rules and regulations concerning the payment and disposition thereof, as shall be prescribed by the insurance supervising official of the state in which the principal office of such establishments in the United States is located.

Now, Therefore:

Know all men by these presents, that I, Burton Mansfield, Insurance Commissioner of the State of Connecticut, do hereby prescribe, for the purpose of regulating the business of such establishments which have their principal office in the State of Connecticut, the following

54 Rules and Regulations.

1. No money shall be disbursed except for administrative or agency expenses, or for settlements under policies or other contracts made by and between such companies and the other contracting parties thereto, through the United States Branches of said companies.

2. All disbursements must be made by check, draft, or letter of instructions, authorizing the same to be made, which must be duly countersigned or approved by the Insurance Commissioner of the State of Connecticut, or by some person authorized thereto by him in writing.

3. Every department or branch office, belonging to any United States Branch, having power to disburse money for any purpose shall be subject to rules 1 and 2.

4. On every Monday a statement showing the cash income and the cash outgo, with cash balances in office and on deposit with banks for the week previous shall be mailed to the Insurance Commissioner of the State of Connecticut, at his office in the Capitol at Hartford, Conn.

5. Monthly statements on suitable blanks shall be prepared and forwarded to said Insurance Commissioner at the above address within thirty days after the close of each month.

6. Every bank in which any funds of said companies are deposited, or in which any depositary of any of the United States Branches of such companies, or in turn, of their branches
55 or departments, shall be deposited, shall be at once notified by the United States Manager that no payment by such bank shall be made except as hereinbefore prescribed.

7. The United States Trustees shall not disburse any funds, or make any investments, or sell, remove or transfer any securities without previous notice in writing to the Insurance Commissioner aforesaid, at the above address. Such funds and securities shall be subject to the joint control of said Commissioner, or some one whom he may designate in writing and the parties, who but for these rules and regulations would be entrusted with their custody. A copy of these rules shall be furnished to each of said Trustees.

8. The Insurance Commissioner aforesaid, either by himself or his representative, shall inspect all books, accounts, documents and vouchers of the companies described, and of such United States Branches, whenever he shall see fit.

9. An agreement in writing shall be forthwith executed by the United States Manager of each of said companies above described whereby he shall specifically agree that in no event shall any funds belonging to or held for the benefit of such companies be transmitted outside of the United States, or be used as the basis for the establishment, directly or indirectly, of any credit within or outside of the United States, to, or for the benefit or use of the enemy or any of its allies, without the permission of the United States Government.

10. A copy of these rules and regulations shall be furnished to every person, company, or organization acting as agent of said companies herein described, and to every company or organization doing business with said companies.

11. These rules and regulations may be changed, altered and modified by the Insurance Commissioner of the State of Connecticut at any time. Reasonable notice shall be given of such change, alteration or modification.

Executed in duplicate on the day and year above written.

BURTON MANSFIELD,
Insurance Commissioner.

EXHIBIT 4.

Alien Property Custodian.

Washington,

D. C.

Treas. 98
Report 1200

Demand by Alien Property Custodian for Property.

To Carl Schreiner, Manager, and Walter T. Rosen, Rudolph Ko and J. Markham Marshall, Trustees of and for the Munich Re-Insurance Company, 18 Asylum St., Hartford, Conn.

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6th, 1917, and the amendments thereto and the Executive Orders and Proclamations issued in pursuance thereof, by virtue of the authority vested in me by said Act and said Orders and Proclamations, after investigation do determine that The Munich Re-Insurance Company, whose address is Munich, Germany, is an enemy within the purview of said "Trading with the Enemy Act," and that pursuant to the provisions and conditions of the license issued to the said Company by the Secretary of the Treasury of the United States under the provisions of the said "Trading with the Enemy Act," you do have and hold in your custody or under your control, by virtue of a deed of trust and other powers granted by said Munich Re-Insurance Company and filed in the office of the Superintendent of Insurance of the State of New York, certain securities or other properties of the said Munich Re-Insurance Company, the value of which securities or properties exceeds the amount presently required by the terms and conditions of such deed of trust or by the statutes of the State of New York, having been released from the needs of business in the course of liquidation as provided by said license.

I, as such Alien Property Custodian, do hereby require that such securities or properties in excess of the amount required for the purposes of such trust shall be by you transferred, assigned, delivered and paid over to me as Alien Property Custodian to be by
57 me held, administered, and accounted for as provided by law.

The State Bank and Trust Company is hereby designated a depositary and is authorized to receive for and on behalf of the Alien Property Custodian the securities or properties hereinbefore mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said securities and property to it forthwith.

Witness my hand and seal of office on this 28th day of October, 1918.

(Signed) A. MITCHELL PALMER,
Alien Property Custodian.

Served the foregoing Demand on the within named Munich Reinsurance Company, at the office of said Corporation, 18 Asylum St. Hartford, Connecticut, by giving to Mr. Gustave A. Ziemen, Asst. Secy. of the said Corporation, a true and correct copy thereof, and by making known to him the contents thereof, this 31st day of October, 1918.

STATE BANK & TRUST CO.,
Depositary.
By GEORGE H. BURT,
Vice Pres.

EXHIBIT 5.

Trust No. 14986
Report No. 12682

Office of the

Alien Property Custodian.

Demand for Property.

To Carl Schreiner, as Manager, New York City, Walter T. Rosen, Rudolph Metz, as Trustees; J. Markham Marshall, The Superintendent of Insurance of the State of New York, The Superintendent of Insurance of the State of Ohio, and to all persons to whom this may concern:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917, and the amendments thereto and the Proclamations and Executive Orders issued pursuant thereto, after investigation, do determine that the following money and other property to wit:

All and singular the money and other property, real and personal, tangible and intangible, rights, claims, titles, interests, effects and assets of every kind and description whatsoever, wherever situated and operating within the United States as defined in the "Trading with the Enemy Act" and all incidents and appurtenances thereto, including the business as a going concern and the good will possessed, held and enjoyed by in the name of, or for, or on behalf of, the U. S. Dept. of the Munich Re-insurance Co., belong to and are held for, by, on account of, on behalf of, or for the benefit of the said U. S. Dept. of the Munich Re-insurance Co., which Company, whose principal home office and address is Munich, Germany.

I further after investigation, do determine to be an enemy, not holding a license granted by the President within the purview of said Act, Proclamations and Executive Orders, and I hereby re-

quire of you jointly, and each of you severally, that the said money and property shall be transferred, assigned, delivered and paid over to me, as Alien Property Custodian, to be by me held, administered and accounted for as provided by law; provided, however, that securities on deposit according to law with Insurance Officials of any State of the United States shall continue subject to all lawful conditions and terms of such deposit.

This demand is supplementary to any demand which may heretofore have been made upon you or any other with respect to such money and other property or any part thereof, and this demand shall not prejudice or affect any demand which has been or which may hereafter be made.

61 Witness my hand and seal of office, this eighteenth day of November, 1918.

(Sgd.) A. MITCHELL PALMER,
Alien Property Custodian.

Approved: Referred for Signature:

Bureau of Law — Division of Insurance

— — — —

— — — —

Chief.

Service of the within Demand Accepted.

CARL SCHREINER,
As Manager of the Munich Reins. Co., United States Department, Hartford, Conn.
WALTER T. ROSEN, *Trustee.*
RUDOLPH METZ, *as Trustee.*
J. MARKHAM MARSHALL.
JESSE S. PHILLIPS,
Supt. of Ins., State of New York.

Served the within Demand on each of the above-named parties upon whom said Demand is made, by giving a true and correct copy thereof to such party and by making known to him the contents thereof.

Witness my hand this — day of November, 1918.

— —.

APC-MM-6'19.

62 EXHIBIT 6.

December 10, 1918.

Walter T. Rosen, Esq., Trustee, &c.,
Ladenburg Thalmann & Company,
25 Broad Street,
New York City.

MY DEAR SIR:

You have asked my opinion upon the rights and duties of the United States Trustee of the Munich Re-insurance Company con-

sequent upon a demand made by the Alien Property Custodian of the United States on the 28th of October 1918. This demand recites that you and your fellow trustees hold certain securities or properties of the Munich Re-insurance Company, the value of which exceeds the amount presently required by the terms and conditions of the trust deed or of the statutes of the State of New York, having been released from the needs of business in the course of liquidation, as provided by the license issued to the Company by the Secretary of the Treasury under the "Trading with the Enemy Act," and requires that such excess of the amount required for the purposes of the trust shall be by you transferred to him as Alien Property Custodian.

Your trust appears to have been constituted by a deed executed by the Munich Re-insurance Company March 13th, 1911, which quotes paragraphs 3521 and 3522 of the Connecticut statute entitled "Laws relating to Insurance and Insurance Companies, General Statutes, chapter 206." The deed recites that the Munich Re-
insurance Company is carrying on the business of re-in-
63 surance in Connecticut and elsewhere in the United States by a resident manager in the City of Hartford, and declares the deed to be made "to the end that the aforesaid statute of the State of Connecticut may be fully complied with." The first provision of the deed is that the trustees shall receive, hold, possess, and safely keep all assets and property delivered to them, "the same to be held, used, and appropriated to and for satisfying the purposes in the act of the Legislature above mentioned, to be held in trust for the Company."

To ascertain the primary duty of the trustees we must accordingly turn to the Connecticut statute to satisfy the purposes of which you hold the trust property.

We find in chapter 206 referred to by the trust deed the following provisions.—

Paragraph 3519. "No foreign fire insurance company shall take risks in this State unless it has a cash capital of $200,000, and shall have made a deposit with the Treasurer of this State or with the proper officer of some other State of not less than $200,000 in securities, &c."

Paragraph 3521. "Amount of capital and how estimated. The capital of every such foreign insurance company shall for all the purposes of the insurance laws of this State be the aggregate value of its money or securities deposited as aforesaid and all sums loaned on real estate security in any State in the United States, in conformity with the laws of such State providing for the investment of the assets of insurance companies therein and all other assets in the United States in which fire insurance companies organized under the laws of this State may invest."

64 The same section proceeds to say—

"Provided such real estate securities and assets shall be held in the United States by trustees who are citizens of the United States

"approved by the Insurance Commissioner for the benefit of all its "policy holders and creditors in the United States after making the "same deduction from such aggregate value for losses and liabilities "in the United States and for premiums upon risks therein not "expired as is authorized or required by the laws of this State or "by the regulations of its Insurance Department with respect to "fire insurance companies organized under the laws of this State."

It appears by these provisions that all the invested assets of the Munich Re-insurance Company in the United States which have been delivered to you are a part of the capital of the Company, and you hold such invested assets in trust "for the benefit of all the policy holders and creditors of the Company in the United States subject however to certain deductions for losses and liabilities and unearned premiums."

The deductions are to be the same as those required by statute or the regulations of the Insurance Department with respect to fire insurance companies authorized under the laws of Connecticut.

The deductions authorized or required in case of Connecticut companies are to be found in section 3509 General Laws, which authorize examinations by the Insurance Commissioner, and provide—

"Whenever the Commissioner shall ascertain that the assets of "any fire or fire and marine insurance company incorporated by
"this State after deducting for re-insurance and its other
65 "proper liabilities, excepting capital, amount to less than
"three-fourths of its capital stock,—if it have a stock cap-"ital.— * * * he shall call upon it to make up such deficiency within such reasonable time as he shall fix, &c., &c."

The liability for re-insurance is defined in section 3501 of the same statute.

It appears clearly enough by these provisions that the requirements of Connecticut law for the safety of policy holders and creditors in the United States are not satisfied by retaining in the hands of trustees assets sufficient to cover all liabilities of the Company including the sums necessary for re-insurance, but the law requires that there shall also be retained a capital fund which in case of a foreign insurance company includes all the invested assets of the Company in the United States.

It is to be observed that the provision of section 3521, including as part of the capital of a foreign company all its invested assets in the United States is not merely formal or unimportant. It establishes the limitation upon the risks which the Company is authorized to take, for section 3524 and 3500 prohibit any single risk in excess of ten per cent of the capital.

It follows that under the general provisions of your trust you are bound to retain all the assets in your hands either to meet liabilities, or as part of the capital of the Munich Re-Insurance Company which the law of Connecticut requires to be held for the safety of security holders and creditors.

It remains to be seen whether there are any specific justifi-
66 cations for parting with any of this trust property. The trust deed contains no such provisions, except in the 3rd article, provision for investment and re-investment, and for the payment to the Company of the income derived from the securities held; in the 4th article for the payment of debts on which the Company may default; in the 5th article for the withdrawal of "such proportion of "the said trust property as the Company may require for the purpose "of making a deposit in any other State or States as a basis for carry-"ing on the business of insurance in such State or States." By the 9th article it is only after making due provision for all the purposes of the trust that the trustees are to hold the fund subject to the order of the Company, and that article expressly declares "that until all "the outstanding liabilities and obligations of the Company absolute "or contingent to policy holders or creditors in the United States are "fully paid and discharged the said trust fund or so much thereof "as may be necessary to cover the outstanding liabilities shall remain "in the possession of the said trustees for security and protection of "the said policy holders and creditors."

The question how much may be necessary to cover the outstanding liabilities absolute or contingent must of course be determined by reference to the statute, which as we have seen requires that a capital fund shall remain in the possession of the trustees to cover such liabilities.

You advise me that the assets in the hands of the trustees are largely exceeded by losses amounting to about $420,000, and unexpired risks of the Company amounting to about $8,800,000.

I think it is plain that under the terms of the trust deed and the statutes of Connecticut you would not be at liberty under these
67 circumstances to deliver to the Company any portion of the assets in your hands as trustees.

The demand by the Alien Property Custodian that you deliver part of these assets to him necessarily rests upon and is limited by the Munich Re-insurance Company's right to demand such delivery. He is authorized by law to take possession of the property of the Munich Re-insurance Company as an Alien Enemy. He is not authorized to take possession of the property of American policy holders and creditors, or of property held in trust for them by American trustees, and this is plainly the view of the Custodian, for he bases his demand upon the assertion that the value of securities in the hands of the trustees "exceeds the amount presently required "by the terms and conditions of such deed of trust, or by the statutes, "&c., having been released from the needs of business in the course "of liquidation."

As to that I advise you that if you deliver up any portion of the assets now in your hands as trustee on the ground stated by the Enemy Alien Custodian that the value exceeds the amount required by the terms and conditions of the deed of trust and the statutes you will do so at your own risk, and neither the recital of the Alien Property Custodian in his demand nor his demand itself will afford you any protection against liability to policy holder sand creditors

of the Munich Re-insurance Company in case the assets remaining in your hands should be insufficient to meet all liabilities. The demand of the custodian recites a license issued to the Munich Reinsurance Company under the "Trading with the Enemy Act," and refers to an excess value of securities as "having been released
68 "from the needs of business in the course of liquidation, as "provided by said license."

The license referred to was issued by the Acting Secretary of the Treasury May 8, 1918, and it authorizes the Munich Re-insurance Company to continue its business in liquidation. It contains the following condition imposed upon the Company "that it (the Company) "will at any time upon the order of the Alien Property Custodian "deliver to him or to a depositary designated by him all or such por"tion of the securities owned by it, and all its other assets or property "in the United States as he shall demand." It is to this provision apparently that the demand refers.

This provision, however, cannot affect your duties as trustees, or enlarge the rights of the Alien Property Custodian. It is a matter between the Treasury Department and the Company. You hold for your cestuis que trustent against the Company, and no condition imposed upon the Company or agreed to by it can bind you in any way.

You are not, however, left to determine unaided the question raised by the assertion of the Alien Property Custodian that you have an excess of assets in your hands. You are administering your trust under the laws of Connecticut, and the regulation of the Insurance Commissioner of that State dated April 25, 1917, contain the following provision—"The United States Trustees shall not disburse "any funds or make any investments, or sell or remove or transfer "any securities without previous notice in writing to the Insurance "Commissioner as aforesaid at the above address. Such funds and "securities shall be subject to the joint control of said Com-
69 "missioner, or someone whom he may designate in writing, "and the parties who but for these rules and regulations would "be entrusted with their custody." It is accordingly your duty to consult the Insurance Commissioner regarding the answer which you should make to the demand of the Alien Property Custodian. The Commissioner is authorized by the laws of the State to enquire into the financial condition and management of the Company, and to examine its trustees and agents, its assets, books and accounts. The duty of joint control which the Commissioner has assumed to exercise under the regulation quoted would naturally and properly lead him to exercise this power of enquiry and examination for the purpose of determining to what extent (if any) his assent should be given to a present delivery of assets hitherto held by the trustees to the Alien Property Custodian.

I recommend that you transmit to the Insurance Commissioner of Connecticut a copy of the Alien Property Custodian's demand upon you, and request such an examination.

I enclose a draft of the communication to the Insurance Commissioner for that purpose.

Very truly yours, ELIHU ROOT.

70 EXHIBIT 7.

December 19, 1918.

To the Insurance Commissioner of the State of Connecticut.

SIR:

The undersigned are the Trustees in the United States appointed by the Directors of the Munich Re-insurance Company under the provision of sections 3521 and 3522, chapter 206 of the General Laws of Connecticut, relating to foreign insurance companies.

That Company has been for some time in process of liquidation under the "Trading with the Enemy Act," and under a license issued by yourself April 1st 1918 and a license issued by the Treasury Department of the United States May 8th 1918, and recently revoked.

The Alien Property Custodian under the "Trading with the Enemy Act" has made a demand upon us as such trustees for transfer and delivery to him of securities and property held by us in trust for the benefit of all the policy holders and creditors in the United States of the Munich Re-insurance Company, which the Custodian deems to be in excess of the amount required for the purposes of the trust. We are desirous to comply with the demand of the Alien Property Custodian if and so far as it may be consistent with our duties as trustees. We do not, however, feel at liberty to act or to decline to act on this demand independently both because of the statutory powers of regulation and supervision vested in you
71 and because of the clause in your regulations of April 25, 1917, which provides:

"The United States trustees shall not disburse any funds or make "any investment, or sell, remove, or transfer any securities, without "previous notice in writing to the Insurance Commissioner * * * "Such funds and securities shall be subject to the joint control of "said Commissioner or someone whom he may designate in writing, "and the parties who but for these rules and regulations would be "entrusted with their custody."

We accordingly transmit to you herewith a copy of the demand made upon us by the Alien Property Custodian dated October 28, 1918 for such action as you may deem appropriate.

We beg leave to suggest that unless in your opinion the duty imposed upon us as trustees by the statute requires us to retain in our possession all the invested assets of the Munich Re-insurance Company in our hands until the conclusion of the trust an examination of the affairs of the Company and of the trust in the exercise of your statutory powers with a view to determine whether there be any excess over the amount which the statute requires us to retain would contribute very much to the proper and satisfactory execution of the trust.

Very respectfully,

WALTER ROSEN.
RUDOLF METZ.
J. MARKHAM MARSHALL.

72 EXHIBIT 8.

Trust No. 1-996.
Report No. 12682.

Alien Property Custodian.

Demand for Property.

To Walter T. Rosen, Rudolph Metz, J. Markham Marshall, as Trustees, and to all persons whom this may concern:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917, and the amendments thereto and the Proclamations and Executive Orders issued pursuant thereto, after investigation, have determined heretofore and do hereby determine that the following property to wit:

All of that property particularly described, itemized and listed upon and by schedule attached hereto marked Exhibit A, each page of which is identified by the signature Thos. Phillips on the margin thereof;

Belongs to and is held for, by, on account of, on behalf of or for the benefit of the Munich Reinsurance Company which Company (whose principal Home Office and address is Munich, Germany) I, as such Alien Property Custodian, after investigation have determined heretofore and *to* determine hereby to be an enemy
73 not holding a license granted by the President within the purview of said Act, Proclamations and Executive Orders.

As such Alien Property Custodian I do seize such property and do require of you jointly and of each of you severally that the said property shall be transferred, assigned, delivered and paid over to me as Alien Property Custodian to be by me held, administered and accounted for as provided by Law.

You are further authorized and directed to make the delivery and payment of such property to the New York Trust Company of New York City (or to its order) as Liquidator and Depositary for me under and by virtue of power of authority heretofore granted to said New York Trust Company.

This demand is supplementary to that certain demand with respect to the above described property heretofore issued by me on the 18th day of November, 1918.

Exhibit A—Page 1.

A) NATIONAL PARK BANK, NEW YORK
Bonds

Interest | Date | Maturity | Amount

Exhibit A—Page 1.

A) NATIONAL PARK BANK, NEW YORK

Bonds	Interest	Date	Maturity	Amount	
Atlanta & Charlotte Air Line Ry. First Mortgage	4½%	Jan.-July	1944	$50,000.	
Atlantic Coast Line R. R. Louisville & Nashville Coll.	4 %	May-Nov.	1952	$25,000.	
Atlantic & Danville R. R. First Mortgage	4 %	Jan.-July	1948	$30,000.	
Baltimore & Ohio R. R. Equipment Series "H"	4½%	Apr.-Oct.	1921	$10,000.	
Baltimore & Ohio R. R. Equipment Series "I"	4½%	Apr.-Oct.	1922	$10,000.	
Baltimore & Ohio R. R. Equipment Series "J"	4½%	Apr.-Oct.	1923	$10,000.	
Baltimore & Ohio R. R. Refunding Mortgage	5 %	June-Dec.	1995	$25,000.	
Birmingham Ry. Light & Power Co. General Refunding	4½%	Apr.-Oct.	1954	$11,000.	
Broadway & Seventh Ave. R. R. First Mortgage	5 %	June-Dec.	1943	$5,000.	
Brooklyn Union Elevated R. R. 55% First Mortgage	5 %	Feb.-Aug.	1950	$50,000.	
Central Railroad of New Jersey, General Mortgage	5 %	Jan.-July	1987	$5,000.	
Central Pacific Ry. First Refunding Mortgage	4 %	Feb.-Aug.	1949	$125,000.	
Chesapeake & Ohio Ry. & A. Division I. Cons. Mtge.	4 %	Jan.-July	1989	$5,000.	$100 in coupons not cashed
Chesapeake & Ohio Ry. General Mortgage	4½%	Mar.-Sept.	1992	$75,000.	
Chesapeake & Ohio Ry. Convertible	4½%	Feb.-Aug.	1930	$25,000.	
Chicago & Alton R. R. Refunding Mortgage	3 %	Apr.-Oct.	1949	$50,000.	
Chicago & Northwestern Ry. General Mortgage	5 %	May-Nov.	1987	$8,000.	
Chicago & Western Indiana R. R. Cons. Mortgage	4 %	Jan.-July	1952	$50,000.	
Chicago, Lake Shore & Eastern Ry. First Mortgage	4½%	June-Dec.	1969	$25,000.	
Chicago, Milwaukee & Puget Sound Ry. First Mortgage	4 %	Jan.-July	1949	$100,000.	
Chicago, Milwaukee & St. Paul Ry. General Mortgage	4½%	Jan.-July	1989	$100,000.	
Chicago, Rock Island & Pacific Ry. Refunding	4 %	Apr.-Oct.	1934	$50,000.	
Chicago Union Station Company First Mortgage	4½%	Jan.-July	1963	$50,000.	
Cincinnati, Indianapolis, St. Louis & Chicago R. R.	4 %	F.M.A.N.	1936	$10,000.	
Cleveland, Cincinnati, Chicago & St. Louis R. R. Genl. Mtge.	4 %	June-Dec.	1993	$39,000.	
Colorado & Southern Ry. Refunding & Ext.	4½%	May-Nov.	1935	$50,000.	
Consolidated Gas Co. of New York, Convertible	6 %	F.M.A.N.	1920	$100,000.	
Delaware & Hudson Co. First & Refunding Mortgage	4 %	May-Nov.	1943	$100,000.	
Detroit & Mackinac R. R. First Lien	4 %	June-Dec.	1995	$100,000	
Detroit Terminal & Tunnel First Mortgage	4½%	May-Nov.	1961	$50,000.	
Erie Railroad Co. General Lien	4 %	Jan.-July	1996	$50,000.	
Erie Railroad Company Prior Lien	4 %	Jan.-July	1996	$25,000.	
Erie Railroad Pennsylvania Collateral Trust	4 %	Feb.-Aug.	1951	$50,000.	
Florida West Shore Ry. First Mortgage	5 %	Jan.-July	1934	$25,000.	
German Imperial Government Treasury Bonds	5 %	Mar.-Sept.	1918	$200,000.	$10,000 in coupons not —cashed. Deposited with Ladenburg Thalmann Co.
Hocking Valley Railway First Cons. Mortgage	4½%	Jan.-July	1999	$31,000.	
Illinois Central R. R. St. Louis Division	3½%	Jan.-July	1951	$25,000.	
Interborough Rapid Transit Co. First & Refdg. Mtge.	5 %	Jan.-July	1966	$50,000.	
Kanawha & Michigan Ry. First Mortgage	4 %	Apr.-Oct.	1990	$10,000.	
Kansas City, Fort Scott & Memphis Ry. Refunding	4 %	Apr.-Oct.	1936	$78,000.	
Kansas City Southern Ry. First Mortgage	3 %	Apr.-Oct.	1950	$164,000.	
Kansas City Southern Ry. Refunding & Impt.	5 %	Jan.-July	1950	$100,000.	
Lake Erie & Western R. R. First Mortgage	5 %	Jan.-July	1937	$4,000.	
Louisville & Nashville R. R. St. Louis Div., Second Mtge.	3 %	Mar.-Sept.	1980	$16,000.	
Macon, Dublin & Savannah R. R. First Mortgage	5 %	Jan.-July	1947	$20,000.	
Manhattan Ry. Consolidated Mortgage	4 %	Apr.-Oct.	1990	$25,000.	
Minneapolis, St. Paul, Sault Ste Marie Ry.	4 %	Jan.-July	1938	$55,000.	
New York, Chicago & St. Louis R. R. Debentures	4 %	May-Nov.	1931	$25,000.	
New York, New Haven & Hartford R. R. Conv. Debentures	6 %	Jan.-July	1948	$7,000.	
New York, New Haven & Hartford R. R. Conv. Debentures	3½%	Jan.-July	1956	$90,000.	—$1575 in coupons not cashed.
New York, Ontario & Western Ry. General Mortgage	4 %	June-Dec.	1955	$100,000.	
Northern Pacific R. R. Prior Lien	4 %	J.A.J.O.	1997	$25,000.	
Northern Pacific R. R. St. Paul, Duluth Division	4 %	June-Dec.	1996	$50,000.	
Oregon-Washington R. R. & Nav. Co. I. & Refdg. Mtge.	4 %	Jan.-July	1961	$100,000.	
Philadelphia Company Convertible Debentures	5 %	May-Nov.	1922	$50,000.	
Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Cons. Mtge.	4½%	Feb.-Aug.	1963	$50,000.	
Reading Company General Mortgage	4 %	Jan.-July	1997	$50,000.	
Rio Grande Western R. R. First Mortgage	4 %	Jan.-July	1939	$20,000.	
San Antonio & Arkansas Pass First Mortgage	4 %	Jan.-July	1943	$50,000.	
Seaboard Air Line Ry. Atlanta Birmingham Division	4 %	Mar.-Sept.	1933	$50,000.	
Seaboard Air Line Ry. Refunding Mortgage	4 %	Apr.-Oct.	1959	$100,000.	
Seaboard Air Line Ry. 1st Consolidated Mortgage	6 %	Mar.-Sept.	1945	$50,000.	
Southern Pacific R. R. Central Pacific Collateral	4 %	June-Dec.	1949	$25,000.	
Southern Ry. St. Louis Division First Mortgage	4 %	Jan.-July	1951	$25,000.	
St. Louis & San Francisco Ry. Prior Lien Mortgage	4 %	Jan.-July	1950	$112,500	
St. Louis & San Francisco Railway Adjustment Mortgage	6 %	Apr.-Oct.	1955	$37,500	
St. Louis Southwestern R. R. First Mortgage	4 %	May-Nov.	1989	$50,000	
Toledo & Ohio Central Ry. First Mortgage	5 %	Jan.-July	1935	$12,000.	
Toledo & Ohio Central Ry. First Mortgage Western Div.	5 %	Apr.-Oct.	1935	$15,000.	
Union Pacific R. R. First Lien & Refunding	4 %	Mar.-Sept.	2008	$50,000.	
Wabash Railroad Omaha Division First Mortgage	3½%	Apr.-Oct.	1941	$50,000.	
Western Maryland R. R. First Mortgage	4 %	Apr.-Oct.	1952	$75,000.	
Western New York & Pennsylvania R. R. General 4%	4 %	Apr.-Oct.	1943	$20,000.	
Wheeling & Lake Erie R. R. First Consolidated	4 %	Mar.-Sept.	1949	$25,000.	
Wisconsin Central Ry. First General Mortgage	4 %	Jan.-July	1949	$74,000.	
Stocks					
Atchison, Topeka & Santa Fe R. R. Preferred	5 %	Feb.-Aug.		$25,000.	
Consolidated Gas Company of New York	7 %	M. J. S. D.		$25,000.	
Norfolk & Western Railroad Preferred	4 %	F. M. A. N.		$20,000.	
Pennsylvania Railroad	6 %	J. A. J. O.		$75,000.	

B) LADENBURG, THALMANN & CO., NEW YORK

Bonds					
Atlantic Coast Line R. R. I. Cons. Mtge.	4 %	Mar.-Sept.	1952	$75,000.	
Baltimore & Ohio R. R. Convertible	4½%	Mar.-Sept.	1933	$14,000.	
Chicago, Burlington & Quincy R. R. General Mortgage	4 %	Mar.-Sept.	1958	$25,000.	
German Imperial Government Treasury Notes	5 %	Mar.-Sept.	1918	$125,000.	
United States Government Registered Gold	4 %	F. M. A. N.	1925	$50,000.	
				$4,093,000.	

Deposit account with Ladenburg, Thalmann & Co., New York, of $76,753.27 with all additions thereto and accrued interest at the rate of 3½%.

Witness my hand and seal of office, this 12th day of February, 1919.

A. MITCHELL PALMER,
Alien Property Custodian.

T. S. PLACE.

[SEAL.]

Referred for Signature.
Division of Insurance.

THOS. H. PHILLIPS,
For Chief.

Approved
Bureau of Law.
SPIER WHITAKER.

74 Service of the within Demand Accepted:

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Served the within Demand on each of the above named parties upon whom said Demand is made, by giving a true and correct copy thereof to each party and by making known to him the contents hereof.

Witness my hand this — day of November, 1918.

——— ———,

A. P. C.—M. M.—6.19.

(Here follows list of bonds and stocks marked pages 75-76.)

77 EXHIBIT 9.

Trans—1—'68.

Alien Property Custodian.

Demand for Property.

To Ladenburg, Thalmann & Co., 25 Broad Street, New York, N. Y., and to all Persons Whom This May Concern:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917, and the amendments thereto and the Proclamations and Executive Orders issued pursuant thereto, after investigation, have determined heretofore and do hereby determine that the following property to wit:

All of that property particularly described, itemized and listed upon and by schedule attached hereto marked Exhibit A, each page of which is identified by the signature Thos. H. Phillips on the Margin thereof.

Belongs to and is held by, on account of, on behalf of, or for the benefit of the Munich Reinsurance Company which company (whose principal Home Office and address is Munich, Germany) I, as such Alien Property Custodian, after investigation have determined heretofore and do determine hereby to be an enemy not holding a license granted by the President within the Purview of said Act, Proclamations and Executive Orders.

78 As such Alien Property Custodian I do seize such property and do require of you jointly and of each of you severally that the said property shall be transferred, assigned, delivered and paid over to me as Alien Property Custodian to be by me held, administered and accounted for as provided by law.

You are further authorized and directed to make the delivery and payment of such property to Ralph J. Baker and or Alexander Kenny and or James Schneider.

Witness my hand and seal of office this seventh day of March 1919.

(Sgd.) FRANCIS P. GARVAN,
Alien Property Custodian.

Approved:
Bureau of Law,
(Sgd.) T. B. GOERTNER.

3/6/19.

Referred for signature.
Division of Insurance.
(Sgd.) THOS. H. PHILLIPS,
Acting Chief.

STATE OF NEW YORK,
County of New York, ss:

On this seventh day of March, 1919, before me personally come Francis P. Garvan, Alien Property Custodian, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same as Alien Property Custodian.

(Sgd.) E. H. McCULLOCH,
[NOTARY'S SEAL.] *Notary Public No. 92, New York*
County Register's No. 10055.

Commission Expires March 30, 1920.

Service of the within Demand Accepted:
E. V. CONNOLLY.

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Served the within Demand on each of the above named parties on whom said Demand is made, by giving a true and correct copy hereof to such party and by making known to him the contents hereof.

Witness my hand this 7th day of March, 1919.

——— ———.

A. P. C.—M. M.—6.T9.

Bonds.

$7,000 Atlantic Coast Line R. R. 4% First Consolidated Mortgage Bonds, maturing 1952.

1,000 Baltimore & Ohio R. R. 4½% Convertible Bonds, Maturing 1933.

2,000 Chicago, Burlington & Quincy R. R. 4% General Mortgage Bonds, maturing 1958.

125,000 German Imperial Government 5% Treasury Notes, maturing 1918.
50,000 United States Government 4% Registered Gold Bonds, maturing 1925.

(Sgd.) THO-. H. PHILLIPS.

Exhibit "A."
Trust No.....
Report No.....

A. P. C. Form No. 106*1.
Blank Demand as Amended.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

To Ladenburg, Thalmann & Company.
Address, New York, N. Y.:

I, Francis P. Garvan, Alien Property Custodian duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, the amendments thereto, the proclamation of the President, and the Executive Orders issued in pursuance thereof, by virtue of the authority vested in me by said Act as amended, and by said Executive Orders, after investigation to determine that:

81 Munich Reinsurance Company, Name of Enemy or Ally of Enemy, whose address is Munich, Germany, is an enemy, not holding a license granted by the President, and that certain obligations and indebtedness appearing upon your books and records as a deposit account standing on your books as of March 3, 1919, in the name of and to the credit of Rudolf Metz, J. Markham Marshall and Walter T. Rosen, as Trustees under a certain trust deed made and executed by the Munich Reinsurance Company, of Munich, Germany, on March 31, 1914, in the amount of $78,545.83, together with any accretions thereto, and any interest accrued on the said obligation and indebtedness and on the accretions thereto is by you owing and held for, on account of, on behalf of, and for the benefit of said enemy.

I, as Alien Property Custodian do hereby seize the said obligation and indebtedness and do hereby require that the said indebtedness shall be by you conveyed, transferred and assigned to me as Alien Property Custodian to be by me held, administered and accounted for as provided by law.

I, as Alien Property Custodian do further require that you note the substance of this seizure and demand upon your books and records with respect to the said obligation and indebtedness.

I, as Alien Property Custodian do further require that you shall forthwith deliver and pay over to me the sum of $78,545.83, together with any accretions thereto and any interest accrued on the said sum and the accretions thereto on account of the said obligation and indebtedness to be by me held, administered and accounted for as provided by law.

82 I, as Alien Property Custodian do hereby further require that within five (5) days from the service of this demand upon you, you shall report to me any and all acts which you have done or omitted to do pursuant to the requirements of this demand. Witness my hand and seal of office this 7th day of March, 1919.

(Sgd.) FRANCIS P. GARVAN,
Alien Property Custodian.

Referred to Bureau of Law:

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Division of .....

Date .....

Approved as to form and execution:
(Sgd.) W. H. SADLER, Jr.,
Bureau of Law.

Date March 6, 1919.

Report No.....

Trust No.....

Referred to Alien Property Custodian for signature:

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Division of.....

Date .....

STATE OF NEW YORK,
County of New York, ss:

On this seventh day of March, 1919, before me personally came Francis P. Garvan, Alien Property Custodian, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same as Alien Property Custodian.

(Signed) E. H. McCOLLOCH,
[SEAL.] *Notary Public No. 92, New York County,*
Register's No. 10055.

Commission Expires March 30, 1920.

83 EXHIBIT 10.

Supreme Court of the State of New York, New York County.

RUDOLF METZ and J. MARKHAM MARSHALL, as Trustees under a Certain Trust Deed Made and Executed by the Munich Re-Insurance Company at Munich, Germany, Plaintiffs,

against

MUNICH RE-INSURANCE COMPANY, of Munich, Germany; A. Mitchell Palmer, as Alien Property Custodian, Acting Under the Provisions of the Act of Congress Entitled "Trading with the Enemy Act"; Walter T. Rosen, as Trustee under a Certain Trust Deed Made and Executed by the Munich Re-Insurance Company of Munich, Germany; Aetna Insurance Company; Agricultural Insurance Company; American Fire Insurance Company; Concordia Fire Insurance Company; Continental Fire Insurance Company; Firemen's Fire Insurance Company of Newark; National
84 Liberty Insurance Company; Hanover Fire Insurance Company; Hartford Fire Insurance Company; The Home Insurance Company; The Insurance Company of the State of Pennsylvania; Milwaukee Mechanics Insurance Company; Pacific Fire Insurance Company; Security Insurance Company of New Haven; Springfield Fire and Marine Insurance Company; Buffalo Insurance Company; Citizens Insurance Company of Missouri; Aetna Life Insurance Company; The Fidelity & Casualty Company of New York; National Surety Company; The Pacific Mutual Life Insurance Company of California; The Preferred Accident Insurance Company of New York; The Travelers Insurance Company; United States Casualty Company; United States Fidelity & Guarantee Company; Herbert Appleton and Douglass F. Cox, as Attorneys in Fact of and Representing James Crosby Brown; Howland Davis; James M. Edwards; M. Orme Wilson; Horace Havemeyer; Thomas H. Kelly; James L. Laidlaw; John T. Terry; John E. Berwind; Adrian Iselin, Jr.,
85 Ernest Iselin, Lewis Iselin and Columbus O'Donnell Iselin, Co-Partners Doing Business Under the Firm Name and Style of A. Iselin & Co.; Adrian Iselin, Jr., Individually; J. D. Barrett (first name unknown); H. H. Rogers (first name unknown); W. R. Peters (first name unknown); Frank A. Vanderlip; Howard P. Sweetster; P. A. S. Franklin (first name unknown); Arthur B. Claflin; Charles N. Lee; William Sloane; J. Ogden Armour; Joseph J. O'Donohue, Jr.; W. B. Thomas (first name unknown); J. Adolph Mollenhauer; O. M. Mitchell (first name unknown); George S. Dearborn; Flint & Co.; Edward C. Hoyt; Warren G. Horton; Lewis H. Lapham; Carleton H. Palmer; Stephen Loines; William E. Iselin; William P. Clyde; H. A. Berwind (first name unknown); Charles M. Smith; S. De Ridder (first name unknown); Edmund Trouton; Leaveraft & Co.; Adolph Norden; Louis Watjen and Stephen Edward Nash, Co-Partners Doing Busi-

ness Under the Firm Name and Style of Watjen, Tozl & Co.; Robert K. Smith; Louis Watjen, Individually; Henry R. 86 Mallory; Silas D. Webb; Orville T. Waring; H. St. John Webb; George H. Ware; Edward L. Tucker; Charles D. Lanier; J. Pierpont Morgan, Edward T. Stotsbury, Charles Steele, Henry P. Davison, Arthur E. Newbold, William Pierson Hamilton, William H. Porter, Thomas W. Lamont, Horatio G. Lloyd, Dwight W. Morrow, Edward R. Stettinius and Thomas Cochran, Co-Partners Doing Business Under the Firm Name and Style of J. P. Morgan & Co.; Henry P. Davison, Individually; J. Pierpont Morgan, Individually; Lewis Iselin, Individually; Levi P. Morton; Walter P. Bliss; George B. Agnew; W. Redmond Cross; William B. Goodwin; Herman S. Crossman; Frederick W. White; James Brown; C. S. Mathews (first name unknown); Seth M. Milliken, Louis Muller; F. A. Meyer (first name unknown); Charles A. O'Donohue; Stephen W. Carey; Bernard McCloskey; James H. Post; James B. Dickson; Charles W. McCutcheon; Joseph M. Cudahy; Charles F. Torrey; John D. Ryan; Herbert Appleton; Alba B. Johnson; James Dobson; W. J. Mc- 87 Cahan (first name unknown); Robert H. McCurdy; Samuel Sloane; Edward T. Bedford; Louis F. Swift; B. N. Baker (first name unknown); John E. Hurst; F. W. Wood (first name unknown); E. Levering & Co. (the names of the partners in said firm being unknown); Eugene Blackford; Alex. J. Godby; William H. Dix; Charles C. Homer, Jr.; Joshua Levering; F. W. Wilson & Son (the names of the partners in said firm being unknown); Edwin F. Atkins; Blanchard Randall; R. Brent Keyser; Waldo Newcomer; Edward H. Sanford; Douglass F. Cox, individually; S. T. Morgan (first name unknown); the defendants above mentioned with the added designations "first name unknown" and "the names of the partners in said firm being unknown," are so described as being defendants whose true names are unknown to the plaintiffs herein and who are persons or firms who as policy holders or creditors or otherwise have or claim, or either now or at some future time might have or might claim, to have 88 any right against the plaintiffs herein as trustees, or any right or interest, legal or equitable, against, in or in respect of the said trust funds or any part thereof now in possession or under control of the trustees; Blank Company, Doe & Doe, John Doe, Jane Doe, Richard Roe, Jane Roe, Richard Styles and Rebecca Styles, unknown, the said names being fictitious, the persons, firms, associations and corporations thus designated being each and every person, firm, association and corporation which as policy holders or creditors or otherwise have or claim or either now or at some future time might have or might claim to have any right against the plaintiffs as trustees under said trust deed, or any right or interest, legal or equitable, against, in or in respect of the said trust fund or any part thereof now in the possession or under the control of said trustees, Defendants.

To the Above Named Defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys
89 within twenty days after service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York City, March 3, 1919.

ROOT, CLARK, BUCKNER & HOWLAND,
Attorneys for Plaintiffs.

Office & P. O. Address, 31 Nassau Street, Borough of Manhattan, City of New York.

RUDOLF METZ and J. MARKHAM MARSHALL as Trustees under a Certain Trust Deed Made and Executed by the Munich Re-Insurance Company of Munich, Germany, Plaintiffs,

90 Supreme Court of the State of New York, New York County.

against

MUNICH RE-INSURANCE COMPANY of Munich Germany; A. Mitchell Palmer as Alien Property Custodian, Acting Under the Provisions of the Act of Congress Entitled "Trading with the Enemy Act"; Walter T. Rosen as Trustee Under a Certain Trust Deed Made and Executed by the Munich Re-Insurance Company of Munich, Germany; Aetna Insurance Company; Agricultural Insurance Company; American Fire Insurance Company; Concordia Fire Insurance Company; Continental Fire Insurance Company; Firemen's Fire Insurance Company of Newark; National Liberty Insurance Company; Hanover Fire Insurance Com-
91 pany; Hartford Fire Insurance Company; The Home Insurance Company; The Insurance Company of the State of Pennsylvania; Milwaukee Mechanics Insurance Company; Pacific Fire Insurance Company; Security Insurance Company of New Haven; Springfield Fire and Marine Insurance Company; Buffalo Insurance Company; Citizens Insurance Company of Missouri; Aetna Life Insurance Company; The Fidelity & Casualty Company of New York; National Surety Company; The Pacific Mutual Life Insurance Company of California; The Preferred Accident Insurance Company of New York; The Travellers Insurance Company; United States Casualty Company; United States Fidelity & Guarantee Company; Herbert Appleton and Douglass F. Cox as Attorneys in Fact of and Representing James Crosby Brown; Howland Davis; James M. Edwards; M. Orme Wilson; Horace Havemeyer; Thomas H. Kelly; James L. Laidlaw; John T. Terry; John E. Berwind; Adrian Iselin, Jr., Ernest Iselin, Lewis Iselin and
92 Columbus O'Donnell Iselin, Co-partners Doing Business under the Firm Name and Style of A. Iselin & Co.; Adrian Iselin, Jr., individually; J. D. Barrett (first name unknown);

H. H. Rogers (first name unknown); W. R. Peters (first name unknown); Frank A. Vanderlip; Howard P. Sweetster; P. A. S. Franklin (first name unknown); Arthur B. Claflin; Charles N. Lee; William Sloane; J. Ogden Armour; Joseph J. O'Donohue, Jr.; W. B. Thomas (first name unknown); J. Adolph Mollenhauer; O. M. Mitchell (first name unknown); George S. Dearborn; Flint & Co.; Edward C. Hoyt; Warren G. Horton; Lewis H. Lapham; Carleton H. Palmer; Stephen Loines; William E. Iselin; William P. Clyde; H. A. Berwind (first name unknown); Charles M. Smith; S. De Ridder (first name unknown); Edmund Trouton; Leaycraft & Co.; Adolph Norden; Louis Watjen and Stephen Edward Nash; Co-partners Doing Business under the Firm Name and Style of Watjen, Tool & Co.; Robert K. Smith; Louis Watjen Individually; Henry R. Mallory; Silas D. Webb; Orville T. Waring; H. St. John Webb; George H. Ware; Edward L. Tucker; Charles D. Lanier; J. Pierpont Morgan, Edward T. Stotsbury, Charles Steele, Henry P. Davidson, Arthur E. Newbold, William Pierson Hamilton, William H. Porter, Thomas W. Lamont, Horatio G. Lloyd, Dwight W. Morrow, Edward R. Stettinius and Thomas Cochran, Co-partners Doing Business under the Firm Name and Style of J. P. Morgan & Co.; Henry P. Davison, Individually; J. Pierpont Morgan, Individually; Lewis Iselin, Individually; Levi P. Morton; Walter P. Bliss; George B. Agnew; W. Redmond Cross; William B. Goodwin; Herman S. Crossman; Frederick W. White; James Brown; C. S. Mathews (first name unknown); Seth M. Milliken; Louis Muller; F. A. Meyer (first name unknown); Charles A. O'Donohue; Stephen W. Carey; Bernard McCloskey; James H. Post; James B. Dickson; Charles W. McCutcheon; Joseph M. Cudahy; Charles F. Torrey; John D. Ryan; Herbert Appleton; Alba B. Johnson; James Dobson; W. J. McCahan (first name unknown); Robert H. McCurdy; Samuel Sloane; Edward T. Bedford; Louis F. Swift; B. N. Baker (first name unknown); John E. Hurst; F. W. Wood (first name unknown); E. Levering & Co. (the names of the partners in said firm being unknown); Eugene Blackford; Alex. J. Godby; William H. Dix; Charles C. Homer, Jr.; Joshua Levering; F. W. Wilson & Son (the names of the partners in said firm unknown); Edwin F. Atkins; Blanchard Randall; R. Brent Keyser; Waldo Newcomer; Edward H. Sanford; Douglass F. Cox, Individually; S. T. Morgan (first name unknown); the defendants above mentioned with the added designations "first name unknown" and "the names of the partners in said firm being unknown," are so described as being defendants whose true names are unknown to the plaintiffs herein and who are persons or firms who as policy holders or creditors or otherwise have or claim, or either now or at some future time might have or might claim, to have any right against the plaintiffs herein as trustees, or any right or interest, legal or equitable, against, in or in respect of the said trust funds or any part thereof now in possession or under control of the trustees; Blank Company, Doe & Roe, John Doe Jane Doe, Richard Roe,

Jane Roe, Richard Styles and Rebecca Styles unknown, the said names being fictitious, the persons, firms, associations and corporations thus designated being each and every person, firm, association and corporation which as policy holders or creditors or otherwise have or claim or either now or at some future time might have or might claim to have any right against the plaintiffs as trustees under said trust deed, or any right or interest, legal or equitable, against in or in respect of the said trust fund or any part thereof now in the possession or under the control of said trustees, Defendants.

The above named plaintiffs by Root, Clark, Buckner & Howland, their attorneys, respectfully allege to this Court as follows:

96 First.

For a First Cause of Action.

I. On information and belief, that the defendant Munich Re-Insurance Company was at all the times hereinafter mentioned and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Bavaria, Empire of Germany.

II. That by Chapter 265, Title Twenty-five of the General Statutes, Revision of 1902, of the State of Connecticut, approved June 11, 1901, and becoming effective on July 1, 1902, it was provided, among other things, as follows:

"Sec. 3500. Limitation of risks taken by company. No fire insurance company doing business in this state shall expose itself to loss on any one risk to an amount exceeding ten per cent of its paid-up capital and surplus, but in determining the amount of said risk no portion thereof which shall have been reinsured in any corporation or corporations authorized to do insurance business in this state shall be included."

"Sec. 3509. Examination of affairs, and officers. The insurance commissioner, either personally or by a committee appointed by him, consisting of one or more persons not directors, officers, or agents of any fire or fire and marine insurance company doing business in this state, may at any time examine into the affairs of any fire or fire and marine insurance company incorporated by or doing business
97 in this state. The officers or agents of such company shall exhibit its books to said commissioner or committee, and otherwise facilitate such examination; the commissioner or committee may examine under oath the officers and agents of any such company in relation to its affairs. Said Commissioner may publish the result of such investigation in one or more newspapers published in this state. In relation to the affairs of any company incorporated by or organized under the laws of any other state of the United States, he may, in lieu of such investigation, accept the certificate of the insurance commissioner or superintendent of such state, as to

its condition. Whenever the commissioner shall ascertain that the assets of any fire or fire and marine insurance company incorporated by this state, after deducting for reinsurance and its other proper liabilities, excepting capital, amount to less than three-fourths of its capital stock, if it have a stock capital, or in the case of a mutual company, if the assets, less the unsettled claims and other absolute liabilities, amount to less than three-fourths the sum requisite for reinsurance he shall call upon it to make up such deficiency within such reasonable time as he shall fix, and on failure to comply with such requirement shall bring his petition to a judge of the superior court, praying for an injunction restraining said company from the further prosecution of the business of making or renewing insurance until said deficiency is made up; and if, upon a hearing before said judge, after such reasonable notice to such company as may be
68 ordered, the allegations contained in such petition shall be found to be true, such judge shall issue such injunction."

III. That by Chapter 206, Title 25 of the General Statutes, Revision of 1902 of the State of Connecticut, approved June 11, 1901, and becoming effective on July 1, 1902, it was provided, among other things, as follows:

"Sec. 3518. Term 'foreign insurance company' defined. The term 'foreign insurance company' shall include any company, corporation, association, partnership, or individual of any foreign country doing insurance business in this state."

"Sec. 3519. When foreign fire insurance company may transact business here. No foreign fire insurance company shall take risks in this state unless it has a cash capital of two hundred thousand dollars, and shall have made a deposit with the treasurer of this state or with the proper officer of some other state of not less than two hundred thousand dollars in securities authorized by law for investments by savings banks, in trust for the benefit of its policyholders in the United States; and no policy issued by such company to any citizen of this state shall be invalidated by the occurrence of hostilities between the government of the United States and the government under the laws of which it was organized."

"Sec. 3520. Information to be furnished commissioner. Every foreign insurance company shall, before admission to do busi-
69 ness in this state, furnish to the insurance commissioner a copy of its charter or articles of association, of its last annual report made in the country where it was organized, and the certificate of the officer holding in trust said deposit of two hundred thousand dollars, stating the manner in which the same is invested and the purposes for which the same is held; and it shall furnish annually to the insurance commissioner a statement of the condition of its affairs in the United States, in such form as he shall require."

"Sec. 3521. Amount of capital how estimated. Capital of every such foreign insurance company shall, for the purposes of the insurance laws of this state, be the aggregate value of its money or securities deposited as aforesaid, and all sums loaned on real estate security in any state in the United States, in conformity with the laws of such state providing for the investment of the assets of insurance companies therein, and all other assets in the United States in which fire insurance companies organized under the laws of this state may invest; provided such real estate securities and assets shall be held in the United States by trustees who are citizens of the United States approved by the insurance commissioner, for the benefit of all its policy-holders and creditors in the United States, after making the same deduction from such aggregate value for losses and liabilities in the United States, and for premiums upon risks therein not expired, as is authorized or required by the laws of this state, or by the regulations of its insurance department with respect to fire insurance companies organized under the laws of this state."

"Sec. 3522. Appointment of trustees. The trustees referred to in Sec. 3521 shall be appointed by the directors of such company, and a certified copy of the vote by which they are appointed and of the deed of trust shall be filed in the office of the insurance commissioner; and he may examine such trustees or the agents of such company, under oath, and its assets, books, and accounts, in the same manner as he may examine the officers, agents, assets, books and accounts, of any company authorized to do fire insurance business in this state."

"Sec. 3523. Conditions precedent to transaction of business. No foreign insurance company, or agent or attorney thereof, shall transact the business of fire insurance in this state until such company shall have complied with the law of this state relative to foreign insurance companies, and received a license or certificate of authority from the insurance commissioner; nor shall such companies make contracts of insurance on property in this state except through lawfully constituted and licensed resident agents."

"Sec. 3524. Limitation of risks. No foreign insurance company shall insure against loss by fire or inland navigation, nor expose itself to any such loss by any one risk, for any greater amount in proportion to its capital than companies which are organized under the laws of this state."

"Sec. 3525. License to transact business. When a foreign insurance company shall have complied with the provisions of law relating to such companies, and the insurance commissioner is satisfied that it is solvent in the United States, he may issue to it a license to transact business in this state, upon the payment of thirty dol-

tax for filing a certified copy of its charter or deed of settlement, and annual fees as follows: license fee, fifty dollars; fee for filing statement, twenty dollars; and two dollars for each agent's certificate of authority."

IV. That the aforesaid statutes were at all the times hereinafter mentioned, and now are, in full force and effect in the said state.

V. That for the purpose of establishing a suitable capital pursuant to the provisions of said Section 3521, and thus enabling it to insure substantial risks without violating the provisions of said Sections 3500 and 3524, the defendant Munich Re-Insurance Company on or about March 13, 1911, duly executed and delivered a certain trust deed wherein and whereby Ernst Thalmann, Isaac N. Seligman and Hermann Sieleken, all citizens of the United States and residents of the State of New York, were appointed trustees thereunder. A true copy of said trust deed and the whole thereof is as follows:

"This Indenture, made the thirteenth day of March in the year one thousand nine hundred and eleven, between the Munich
392 Re-Insurance Company of Munich, in the Kingdom of Bavaria, Germany, hereinafter called the 'Company,' party of the first part, and Mr. Ernest Thalmann, Mr. Isaac N. Seligman and Mr. Herman Sieleken, of New York, all citizens of the United States, parties of the second part.

"Witnesseth:

"Whereas it was enacted in and by a certain Act or Acts of the Legislature of the State of Connecticut, entitled 'Laws relating to Insurance and Insurance Companies, General Statutes Chapter 206, specially relating to Foreign Insurance Companies' that under:

"Sec. 3521. Amount of capital how estimated. The capital of any such foreign insurance company shall, for all the purposes of the insurance laws of the state, be the aggregate value of its money or securities deposited as aforesaid, and all sums loaned on real estate security in any state in the United States, in conformity with the laws of such state providing for the investment of the assets of insurance companies therein, and all other assets in the United States in which fire insurance companies organized under the laws of this state may invest; provided such real estate securities and assets shall be held in the United States by trustees who are citizens of the United States approved by the insurance commissioner for the benefit of all its policy holders and creditors in the United States, after making the same deduction from such aggregate value
393 for losses and liabilities in the United States, and for premiums upon risks therein not expired as is authorized or re-

quired by the laws of this state, or by the regulations of its insurance department, with respect to fire insurance companies organized under the laws of this state.'

"and that under:

"'Sec. 3522. Appointment of trustees. The trustees referred to in Sec. 3521 shall be appointed by the directors of such company, and a certified copy of the vote by which they are appointed and of the deed of trust shall be filed in the office of the insurance commissioner; and he may examine such trustees or the agents of such company, under oath, and its assets, books, and accounts in the manner as he may examine the officers, agents, assets, books and accounts, of any company authorized to do insurance business in this State.'

"And Whereas the said Company is a foreign Insurance Company, duly organized and existing under the laws of the Kingdom of Bavaria, Germany, and carrying on the business of re-insurance in the said State of Connecticut and elsewhere in the United States by the Resident Manager in said City of Hartford; Now, therefore, to the end that the aforesaid statute of the State of Connecticut may be fully complied with:

"Know all men by these presents that the said Company doth hereby constitute and appoint Mr. Ernest Thalmann, Mr.
104 Isaac N. Seligman, and Mr. Herman Sielcken of New York, the parties of the second part, and their successors appointed in the manner hereinafter provided, Trustees for the purposes hereinafter stated, and upon the trusts, covenants, agreement, and provisions hereinafter declared and set forth.

"First. The said Trustee shall receive, hold, possess and safely keep all assets and property of every kind and description which shall from time to time hereafter be delivered to them by the Company, the same to be held, used and appropriated to and for satisfying the purposes in the act of the Legislature above mentioned to be held in trust for the Company.

"Second. The Trustees shall give proper receipts and vouchers to the Company for all the property so from time to time delivered to them by the Company, and the said Trustees shall keep a full and accurate record, inventory, and account of the said property so received, and of all their transactions in relation to the same, which record, inventory, and account, shall at all times be opened to the inspection of the Company, its duly authorized agent or agents, and the said Trustees shall from time to time, as they may be required, render and deliver to the Company in such form as its Board of Directors may from time to time prescribe, a true, full and

net account of the business of the said trust, and of all the property held under the same.

96 "Third. The Trustees shall have power (with the previous consent of the Company), to invest and re-invest from time to time the property so as aforesaid delivered in trust, and to this end they shall have power (with such consent as aforesaid) to make all necessary sales, conveyances, assignments, and transfers, and no purchaser shall be obliged to see to the application of the purchase money. It shall be the duty of the Trustees from time to time to make such investments, purchases, sales, conveyances and assignments as they may be requested to make by the said Company. The current interest and income of the said trust property, as it accrues and is received by the Trustees, shall be paid by them to the Company through its bankers in the City of Hartford.

"Fourth. If at any times debts and liabilities for the security of which this trust is created, shall accrue and become due and payable by the Company, and shall not be otherwise satisfied and paid, the Trustee shall have power to appropriate so much of the said trust property as may be necessary to the payment and satisfaction thereof, but no alleged debt or liability shall be so paid or satisfied unless and until the amount and validity of the said alleged debt or liability in each case shall have been admitted by the Company, or until the validity and amount thereof have been established by the claimant in due course of law.

"Fifth. The Trustees shall permit the Company from time to time, if and as occasion shall require, to withdraw such portion of the said trust property as the Company may require for the purpose of making a deposit in any other State or States as a basis for carrying on the business of insurance in such State or States, in compliance with the law thereof, and shall deliver to the Company so much of the trust property as may be required for such purpose.

"Sixth. All vacancies occurring in the trust hereby created, from any cause whatever, shall and may be filled by the appointment by the Company of a successor or successors to the said trust, and the Trustee so appointed, upon accepting such appointment, without further act or deed shall have and possess all the estate, rights and powers conferred upon the said Trustees respectively named in this instrument, or and by the provisions thereof, and shall be subject to all the duties imposed upon such Trustees respectively.

"Seventh. The said Trustees, parties of the second part, and their successors, may at any time resign, and the vacancy created by every such resignation shall and may be filled by the Company, and the said Company shall have the power at any time, and from time to time, without assigning any cause therefor, to remove any

one or more of the said Trustees or their successors, by notice of such removal in writing and thereupon the said Company shall and may, at any time or times thereafter, appoint a successor or successors to the said Trustee or Trustees so removed.

"Eighth. The said Trustees and their successors shall be liable respectively only for their own neglect and misfeasance, and not for the neglect or misfeasance of each other.

"Ninth. After making due provision for the purposes aforesaid and subject to the provisions hereinbefore contained, the Trustees shall stand possessed of the said trust fund, at the control and subject to the order of the Company, and shall and will on any disposal of the same as the Company may direct or appoint. But it is hereby expressly declared and provided, that until all the outstanding liabilities and obligations of the Company, absolute or contingent, to policy-holders or creditors in the United States, are fully paid and discharged, the said trust fund, or so much thereof as may be necessary to cover the outstanding liabilities shall remain in the possession of the said Trustees, for the security and protection of the said policy-holders and creditors, anything herein contained to the contrary notwithstanding.

"Tenth. The Company reserves to itself the right hereafter to add to, alter, modify, or revoke the trusts, conditions, and powers hereby declared, imposed, or conferred in such manner as its Board of Directors may by resolution determine, and as shall be according to law, provided that the rights of its policy-holders and creditors in the United States shall not be thereby impaired.

"In Witness Whereof, the Company have hereunto affixed their common seal, and the said parties hereto of the several part, have hereunto set their hands and seals the day and year first above written.

"On behalf of the

MUNICH REINSURANCE COMPANY.
CARL THIEME.
President.
PAUL SZELINSKI.
Secretary.

United States Consulate General, ss:
Munich, Bavaria.

On this 12th day of March, 1913, before me personally came Dr. Carl Thieme, President, and Mr. Paul Schinki, Secretary of the Munich Re-Insurance Company, with whom I am personally acquainted, who being by me duly sworn said that they resided in the City of Munich; that Mr. Thieme was president and Mr. Schinki was Secretary of the Munich Re-Insurance Company, that they knew the corporate seal of said Munich Re-Insurance Company; that the seal affixed to the annexed conveyance was such corporate seal, that it was affixed by order of the Board of Directors of said Munich Re-Insurance Company and that they signed their names thereto by like order as President and Secretary of said Munich Re-Insurance Company.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

ABRAHAM SCHLESINGER,
(L. S.) *Vice & Deputy Consul General of the United States of America, at Munich, Bavaria.*

No. 211.
For M. 1.20.
$5.00

VII. That pursuant to the terms of said trust deed the said Munich Re-Insurance Company assigned, transferred and conveyed to the trustees therein named certain of its moneys, securities, assets and property to be held by them, in trust, for the purposes set forth in said trust deed.

VIII. That the trustees named therein accepted the trusts created by said trust deed and entered upon the execution of said trusts. That the said trustees filed the said trust deed with the Insurance Commissioner of the State of Connecticut.

VIII. That thereafter the said defendant Munich Re-Insurance Company engaged in the insurance business in the said State of Connecticut and in other states of the United States and entered into various agreements, treaties and contracts re-insuring the risks assumed by various persons, firms, associations and corporations in the United States.

IX. That thereafter and on or about February 26, 1912, the said Ernst Thalmann died and the defendant Walter T. Rosen was duly appointed by said Munich Re-Insurance Company to succeed said Ernst Thalmann as a trustee under said trust deed. That said Walter T. Rosen accepted the trusts created in said trust deed and entered upon the execution of said trusts.

X. That thereafter and during the year 1917 the said Isaac N. Seligman and the said Hermann Sielcken died, and on or about November 8, 1917, the plaintiffs Rudolf Metz and J. Markham Marshall were duly appointed by the said Munich Re-Insurance Company to succeed the said Isaac N. Seligman and Hermann Sielcken as trustees under the said trust deed. That the said plaintiffs accepted the trusts created in said trust deed and entered upon the execution of the said trusts.

XI. That the plaintiff trustees have prepared and submitted the following account showing, to the best of their ability, the securities and moneys received from their predecessor trustees, the income received by the plaintiff trustees, the proceeds of the disposition of a portion of said securities, the payments and disbursements of money made by the plaintiff trustees and the securities and moneys now held by the trustees under said trust deed:

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SCHEDULE A

Being a Statement of the Securities and Cash Received by the Plaintiff Trustees From Their Predecessor Trustees.

Bonds.

Description.	Face amount.
Imperial German Government Treasury Bonds 5% 1918	$200,000
United States Government Registered Gold 4% 1925	140,000
United States Government Coupon Gold 4% 1925	50,000
New York City Registered Gold 3½% 1917	50,000
Atchison, Topeka & Santa Fe Ry. Convertible 4% 1960	10,000
Atlanta & Charlotte Air Line Ry. First Mortg. 4½% 1944	50,000
Atlantic Coast Line R. R. First Mortgage 4% 1952	75,000
Atlantic Coast Line R. R. Louisville & Nashville Coll. 4% 1952	25,000
Atlantic & Danville R. R. First Mortg. 4% 1948	30,000
Baltimore & Ohio R. R. Southwestern Division 3½% 1925	75,000
Baltimore & Ohio R. R. Prior Lien 3½% 1925	47,000
Baltimore & Ohio R. R. Convertible 4½% 1933	109,000
Baltimore & Ohio R. R. Equipment Series H 4½% 1921	10,000
Baltimore & Ohio R. R. Equipment Series I 4½% 1922	10,000

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Baltimore & Ohio R. R. Equipment Series J 4½% 1923	10,000
Baltimore & Ohio R. R. Refunding Mortgage 5% 1995	25,000
Birmingham Ry. Light & Power Co. General Ref. 4½% 1954	11,000

Description.	Face amount.
Brooklyn Union Elevated R. R. 4-5% First Mortg. 5% 1950	50,000
Canada Southern Ry. Consolidated Guaranteed Series A 5% 1962	95,000
Central of Georgia R. R. Consolidated Mortg. 5% 1945.	95,000
Central R. R. of New Jersey Gen. Mortg. 5% 1987	5,000
Central Pacific Ry. First Ref. Mort. 4% 1949	125,000
Chesapeake & Ohio Ry. R. & A. Division First Cons. Mtg. 4% 1989	5,000
Chesapeake & Ohio Ry. General Mort. 4½% 1992	75,000
Chesapeake & Ohio Ry. Convertible 4½% 1930	25,000
Chicago & Alton R. R. Refunding Mortg. 3% 1949	50,000
Chicago, Burlington & Quincy R. R. Gen. Mortg. 4% 1958	75,000
Chicago & Eastern Illinois R. R. Gen. Cons. Mortg. 5% 1937	25,000
Chicago & Eastern Illinois R. R. Ref. & Imp. 4% 1955.	50,000
Chicago & Northwestern Ry. Gen. Mortg. 5% 1987	8,000
Chicago & Western Indiana R. R. Cons. Mortg. 4% 1952	50,000
Chicago, Lake Shore & Eastern Ry. First Mortg. 4½% 1969	25,000
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Chicago, Milwaukee & Puget Sound Ry. First Mortg. 4% 1949	100,000
Chicago, Milwaukee & St. Paul Ry. Gen. Mortg. 4½% 1989	100,000
Chicago, Rock Island & Pacific Ry. Refunding 4%, 1934	50,000
Chicago Union Station Company First Mortg. 4½% 1963	50,000
Cincinnati, Indianapolis, St. Louis & Chicago R. R. 4% 1936	10,000
Cleveland, Cincinnati, Chicago & St. Louis R. R. Gen. Mtg. 4% 1993	39,000
Colorado & Southern Ry. Ref. & Ext. 4½% 1935	50,000
Delaware & Hudson Co. First & Refunding Mtg. 4% 1943	100,000
Detroit & Mackinack R. R. First Lien 4% 1995	100,000
Detroit Terminal & Tunnel First Mortg. 4½% 1961	50,000
Erie R. R. Co. General Lien 4% 1996	50,000
Erie Railroad Co. Prior Lien 4% 1996	25,000
Erie Railroad Pennsylvania Coll. Trust 4% 1951	50,000
Florida West Shore Ry. First Mtg. 5% 1934	25,000
Hocking Valley Railway First Cons. Mortg. 4½% 1999.	31,000
Illinois Central R. R. St. Louis Division 3½% 1951	25,000
Interborough Rapid Transit Co. First and Refunding Mortg. 5% 1966	50,000

Description.	Face amount
Kanawha & Michigan Ry. First Mtg. 4% 1990	10,000
Kansas City, Fort Scott & Memphis Ry. Refunding 4% 1936	78,000

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Kansas City Southern Ry. First Mortg. 3% 1950	164,000
Kansas City Southern Ry. Ref. & Imp. 5% 1950	100,000
Lake Erie & Western R. R. First Mortg. 5% 1937	4,000
Lake Shore & Michigan Southern Ry. Deb. 4% 1931	48,000
Louisville & Nashville R. R. St. Louis Div. Second Mtg. 3% 1980	16,000
Macon, Dublin & Savannah R. R. First Mortg. 5% 1947	20,000
Manhattan Ry. Consolidated Mtg. 4% 1990	25,000
Minneapolis, St. Paul, Sault Ste. Marie Ry. 4% 1938	55,000
Missouri, Kansas & Texas R. R. First Mortg. 4% 1990	25,000
New York, Chicago & St. Louis R. R. Deb. 4% 1931	25,000
New York, New Haven & Hartford R. R. Conv. Deb. 6% 1948	7,000
New York, New Haven & Hartford R. R. Conv. Deb. 3½% 1956	90,000
New York, Ontario & Western Ry. General Mtg. 4% 1955	100,000
Norfolk & Western Ry. First Cons. Mortgage 4% 1996	50,000
Northern Pacific R. R. Gen. Lien and Land Grant 3% 2047	50,000
Northern Pacific R. R. Prior Lien 4% 1997	25,000
Northern Pacific R. R. St. Paul, Duluth Div. 4% 1996	50,000
Oregon R. R. & Navigation Consolidated 4% 1946	50,000

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Oregon-Washington R. R. & Navigation Co. First & Ref. Mtg. 4% 1961	100,000
Pennsylvania R. R. Consolidated Mtg. 4½% 1960	11,000
Pennsylvania Company 4½% 1921	10,000
Philadelphia Co. Convertible Deb. 5% 1922	50,000
Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Cons. Mtg. 4½% 1963	50,000
Reading Company Gen. Mtg. 4% 1997	50,000
Rio Grande Western Railroad First Mortg. 4% 1939	20,000
San Antonio & Arkansas Pass First Mortg. 4% 1943	50,000
Seaboard Air Line Ry. Atlanta-Birmingham Div. 4% 1933	50,000
Seaboard Air Line Ry. Refunding Mortg. 4% 1959	100,000
Seaboard Air Line Ry. First Cos. Mort. 6% 1945	50,000
Southern Pacific R. R. First Ref. Mortg. 4% 1955	108,000
Southern Pacific R. R. Central Pacific Collateral 4% 1949	25,000

Description.	Face amount.
Southern Ry. St. Louis Division First Mortg. 4% 1951.	25,000
St. Louis, Iron Mountain & Southern Ry. Gn. Cons. 5% 1931	25,000
St. Louis & San Francisco Ry. Prior Lien Mortgage 4% 1950	112,500
St. Louis & San Francisco Railway Adjustment Mortg. 6% 1955	37,500
St. Louis Southwestern R. R. First Mortg. 4% 1989..	50,000
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Toledo & Ohio Central Ry. First Mortg. 5% 1935.....	12,000
Toledo & Ohio Central Ry. First Mortg. Western Division 5% 1935	15,000
Union Pacific R. R. First Lien & Refunding 4% 2008..	50,000
Union Pacific Railroad First Mortg. 4% 1947.....	75,000
Union Pacific Railroad Convertible 4% 1927.....	150,000
United Railroads of San Francisco 4% 1927.....	75,000
Wabash Railroad First Mortgage 5% 1939.....	34,000
Wabash Railroad Omaha Division First Mortgage 3½% 1941	50,000
West Shore R. R. Co. First Mortgage 4% 2361.....	50,000
Western Maryland R. R. Mortg. 4% 1952.....	75,000
Western New York & Pennsylvania R. R. General 3-4% 4% 1943	20,000
Wheeling & Lake Erie R. R. First Consolidated 4% 1949	25,000
Wisconsin Central Rys. Gen. Mortg. 4% 1949.....	74,000
Consolidated Gas Co. of New York Convertible 6% 1920.	100,000
General Electric Company Deb. 5% 1952.....	35,000
Chicago, Milwaukee & St. Paul Ry. Conv. 4½% 1932..	5,000
Pennsylvania R. R. Freight Equipment Reg. 4% 1919..	9,000
Totals bonds.....	$5,360,000
117 Stocks.	
Atchison, Topeka & Santa Fe Railroad, Preferred....	$25,000
New York, New Haven & Hartford Railroad.....	19,700
Norfolk & Western Railroad, preferred.....	20,000
Pennsylvania Railroad	75,000
Western Pacific Railroad, preferred.....	37,500
Western Pacific Railroad, common.....	56,250
Consolidated Gas Co. of New York.....	25,000
Total	$258,450

Cash.

Deposit account with Ladenburg, Thalmann & Co. of . . $859,718.17

SCHEDULE B.

Being a Statement of the Securities and Moneys Now Held by Trustees.

Bonds.

Description.	Face amount.
Atlanta & Charlotte Air Line Ry. First Mortgage Bonds 4½% 1944	$50,000
Atlantic Coast Line R. R. Louisville & Nashville Coll. Bonds 4% 1952	25,000
Atlantic & Danville R. R. First Mortgage 4% Bonds 1948	30,000
Baltimore & Ohio R. R. Equipment Series "H" Bonds 4½% 1921	10,000
Baltimore & Ohio R. R. Equipment Series "I" Bonds 4½% 1922	10,000
Baltimore & Ohio R. R. Equipment Series "J" Bonds 4½% 1923	10,000
Baltimore & Ohio R. R. Refunding Mortgage Bonds 5% 1995	25,000
Birmingham Ry. Light & Power Co. General Refunding 4½% 1954	11,000
Broadway & Seventh Ave. R. R. First Mortgage Bonds 5% 1943	5,000
Brooklyn Union Elevated R. R. 4-5% First Mortgage 5% 1950	50,000
Central Railroad of New Jersey, General Mortgage 5% 1987	5,000
Central Pacific Ry. First Refunding Mortgage 4% 1949	125,000
Chesapeake & Ohio Ry. R. & A. Division I. Cons. Mtge. 4% 1989	5,000
Chesapeake & Ohio Ry. General Mortgage 4½% 1992	75,000
Chesapeake & Ohio Ry. Convertible 4½% 1930	25,000
Chicago & Alton R. R. Refunding Mortgage 3% 1949	50,000
Chicago & Northwestern Ry. General Mortgage 5% 1987	8,000
Chicago & Western Indiana R. R. Cons. Mortgage 4% 1952	50,000
Chicago, Lake Shore & Eastern Ry. First Mortgage 4½% 1969	25,000
Chicago, Milwaukee & Puget Sound Ry. First Mortgage 4% 1949	100,000
Chicago, Milwaukee & St. Paul Ry. General Mortgage 4½% 1989	100,000

	Description.	Face amount.
	Chicago, Rock Island & Pacific Ry. Refunding 4% 1934	50,000
	Chicago Union Station Company First Mortgage 4% 1963	50,000
	Cincinnati, Indianapolis, St. Louis & Chicago R. R. 4% 1936	10,000
	Cleveland, Cincinnati, Chicago & St. Louis R. R. Genl. Mtf. 4% 1993	39,000
	Colorado & Southern Ry. Refunding & Ext. 4½% 1935	50,000
	Consolidated Gas Co. of New York, Convertible 6% 1920	100,000
	Delaware & Hudson Co. First & Refunding Mortgage 4% 1943	100,000
	Detroit & Mackinac R. R. First Lien 4% 1995	100,000
	Detroit Terminal & Tunnel First Mortgage 4½% 1691	50,000
	Erie Railroad Co. General Lien 4% 1996	50,000
	Erie Railroad Company Prior Lien 4% 1996	25,000
	Erie Railroad Pennsylvania Collateral Trust 4% 1951	50,000
	Florida West Shore Ry. First Mortgage 5% 1934	25,000
	German Imperial Government Treasury 5% 1918	200,000
120	Hacking Valley Railway First Cons. Mortgage 4½% 1999	31,000
	Illinois Central R. R., St. Louis Division 3½% 1951	25,000
	Interborough Rapid Transit Co. First & Refdg. Mtg. 5 1966	50,000
	Kanawaha & Michigan Ry. First Mortgage 4% 1990	10,000
	Kansas City, Fort Scott & Memphis Ry. Refunding 4% 1936	78,000
	Kansas City Southern Ry. First Mortgage 3% 1950	164,000
	Kansas City Southern Ry. Refunding & Impt. 5% 1950	100,000
	Lake Erie & Western R. R. First Mortgage 5% 1937	4,000
	Louisville & Nashville R. R. St. Louis Div., Second Mtg. 3% 1980	16,000
	Macon, Dublin & Savannah R. R. First Mortgage 5% 1947	20,000
	Manhattan Ry. Consolidated Mortgage 4% 1990	25,000
	Minneapolis, St. Paul, Sault Ste. Marie Ry. 4% 1938	55,000
	New York, Chicago & St. Louis R. R. Debentures 4% 1931	25,000
	New York, New Haven & Hartford R. R. Conv. Debentures 6% 1948	7,000
	New York, New Haven & Hartford R. Conv. Debentures 3½% 1956	90,000
	New York, Ontario Western Ry. General Mortgage 4% 1955	100,000
	Northern Pacific R. R. Prior Lien 4% 1997	25,000
121	Northern Pacific R. R. St. Paul, Duluth Division 4% 1996	50,000
	Oregon-Washington R. R. & Nav. Co. I & Refdg. Mtg. 4% 1961	100,000
	Philadelphia Company Convertible Debentures 5% 1922	50,000

Description.	Face amount
Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Cons. Mtg. 4½% 1963	50,000
Reading Company General Mortgage 4% 1997	50,000
Rio Grande Western R. R. First Mortgage 4% 1939	20,000
San Antonio & Arkansas Pass First Mortgage 4% 1943	50,000
Seaboard Air Line Ry. Atlanta Birmingham Division 4% 1933	50,000
Seaboard Air Line Ry. Refunding Mortgage 4% 1959	100,000
Seaboard Air Line Ry. 1st Consolidated Mortgage 6% 1945	50,000
Seaboard Air Line Ry. 1st Consolidated Mortgage 6%	
Southern Pacific R. R. Central Pacific Collateral 4% 1949	25,000
Southern Ry. St. Louis Division First Mortgage 4% 1951	25,000
St. Louis & San Francisco Ry. Prior Lien Mortgage 4% 1950	112,500
St. Louis & San Francisco Railway Adjustment Mortgage 6% 1955	37,500
St. Louis Southwestern R. R. First Mortgage 4% 1989	50,000
Toledo & Ohio Central Ry. First Mortgage 5% 1935	12,000
Toledo & Ohio Central Ry. First Mortgage Western Div. 5% 1935	15,000
122 Union Pacific R. R. First Lien & Refunding 4% 2008	50,000
Wabash Railroad Omaha Division First Mortgage 3½% 1941	50,000
Wabash Railroad Omaha Division First Mortgage 3½% 1941	50,000
Western Maryland R. R. First Mortgage 4% 1952	75,000
Western New York & Pennsylvania R. R. General 3-4% 4% 1943	20,000
Wheeling & Lake Erie R. R. First Consolidated 4% 1949	25,000
Wisconsin Central Ry. First General Mortgage 4% 1949	74,000
Atlantic Coast Line R. R. L. Cons. Mtg. 4% 1952	75,000
Baltimore & Ohio R. R. Convertible 4½% 1933	14,000
Chicago, Burlington & Quincy R. R. General Mortgage 4% 1958	25,000
German Imperial Government Treasury Notes 5% 1918	125,000
United States Government Registered Gold 4% 1925	50,000
Coupons of Chesapeake & Ohio Ry. R. & A. Division, I Cons. Mtg. not cashed	10
Coupons of German Imperial Government Treasury Bonds not cashed. Deposited with Ladenburg, Thalman & Co.	10,000
Coupons of New York, New Haven & Hartford R. R. Conv. Debentures not cashed	1,57
Total	$3,959,67

123 Stocks.

Description.	Par value.
Atchison, Topeka & Santa Fe R. R. preferred 5%	$25,000
Consolidated Gas Company of New York 7%	25,000
Norfolk & Western Railroad preferred 4%	20,000
Pennsylvania Railroad 6%	75,000
Total	$145,000

Cash on Hand.

Deposit account with Ladenburg, Thalman & Co., New York, of $78,545.83 with all additions thereto and accrued interest at the rate of 3½%	$78,545.83

Schedule C.

Being a statement of the proceeds of the sales of securities in Schedule A not in the possession or under the control of the plaintiff trustees.

1917					
Nov. 9	Sold	$ 1,000	Chicago & Western Indiana Railroad Consolidated Mortgage 4% Bonds of 1952, at 64	$	662.97
Dec. 10	"	50,000	Oregon Railroad & Navigation Consolidated 4% Bonds of 1946, at 79¾		39,862.50
Dec. 11	"	40,000	United States Government 4% Bonds of 1925, at 104-1/16		41,777.78
Dec. 11	"	150,000	Union Pacific Railroad Convertible 4% Bonds of 1927 at 81½		124,720.17
Dec. 11	"	50,000	Northern Pacific General Lien and Land Grant 3% Bonds of 2047, at 58⅛		29,166.67
Dec. 11	"	2,000	Baltimore & Ohio Prior Lien 3½% Bonds of 1925 at 86		1,746.61
Dec. 11	"	12,000	New York Central 4% Bonds of 1931, at 83¾		10,088.33
Dec. 11	"	5,000	Baltimore & Ohio Prior Lien 3½% Bonds of 1925 at 86		4,371.53
Dec. 12	"	10,000	Pennsylvania Company 4½% Bonds of 1921, at 96		9,788.75
Dec. 12	"	11,000	Pennsylvania Railroad Consolidated Mortgage 4½% Bonds of 1960, at 97		10,656.38
1918					
Feb. 19	Recd. for	50,000	New York City 3½% Bonds Corporate Stock due November 1, 1917		50,000.00
Feb. 27	Sold	50,000	United States Government 4% Bonds of 1925, at 104¾		52,519.44
Feb. 27	"	50,000	United States Government 4% Bonds of 1925, at 104¾		52,519.44
Mar. 22	"	2,000	Lake Shore & Michigan Southern Railway Debenture 4% Bonds of 1931, at 83		1,668.93
Apr. 9	"	1,000	Lake Shore & Michigan Southern Railway Debenture 4% Bonds of 1931, at 82½		841.31
Apr. 9	"	1,000	Lake Shore & Michigan Southern Railway Debenture 4% Bonds of 1931, at 82½		841.31
Apr. 10	"	30,000	Wabash Railroad First Mortgage 5% Bonds of 1939, at 92½		28,373.00
Apr. 10	"	1,000	Wabash Railroad First Mortgage 5% Bonds of 1939, at 93		950.00
Apr. 16	"	32,000	Lake Shore & Michigan Southern Railway Debenture 4% Bonds of 1931, at 81		25,466.67

Schedules.

1918					
Apr. 23	Sold	$	1,000	Wabash Railroad First Mortgage 5% Bonds of 1939, at 92¾	950.14
Apr. 23	"		7,000	Southern Pacific First Refunding Mortgage 4% Bonds of 1955, at 77⅝	5,512.11
Apr. 23	"		15,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 82¾	12,355.42
Apr. 23	"		1,000	Atchinson, Topeka & Santa Fe Railway Convertible 4% Bonds of 1960, at 83	844.53
Apr. 24	"		50,000	West Shore Railroad Company First Mortgage 4% Bonds of 2361, at 75¼	38,252.78
Apr. 24	"		2,000	Wabash Railroad First Mortgage 5% Bonds of 1939, at 92¼	1,900.56
Apr. 24	"		1,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78	785.38
Apr. 24	"		5,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78½	3,933.13
Apr. 24	"		3,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78	2,356.13
Apr. 24	"		1,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 82¼	823.81
Apr. 25	"		3,000	Atchison, Topeka & Santa Fe Railway Convertible 4% Bonds of 1960, at 83	2,533.92
Apr. 25	"		7,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947, at 87	6,169.92
Apr. 25	"		1,000	Southern Pacific, at 77¼	788.92
Apr. 26	"		6,000	Atchison, Topeka & Santa Fe Railway Convertible 4% Bonds of 1960, at 83	5,068.50
Apr. 26	"		5,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955 at 77¼	3,945.14
Apr. 26	"		10,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78½	7,906.25
Apr. 26	"		1,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 82¼	824.03
Apr. 29	"		10,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78½	7,910.00
Apr. 29	"		1,000	Uinon Pacific Railroad First Mortgage 4% Bonds of 1947, at 87	881.86
1918					
Apr. 29	Sold	$	2,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947, at 87	1,763.72
Apr. 29	"		5,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 77¼	3,946.81
Apr. 29	"		4,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78½	3,164.00
Apr. 29	"		2,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947, at 87	1,763.72
Apr. 29	"		7,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947, at 87	6,173.08

Schedules.

Apr. 30	"	5,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78½	3,955.63
Apr. 30	"	2,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 78	1,563.94
Apr. 30	"	3,000	Union Pacific First Mortgage 4% Bonds of 1947, at 87	2,645.92
May 1	"	2,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 78½	1,562.50
May 1	"	5,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947, at 87½	4,475.62
May 1	"	5,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947, at 87	4,410.62
May 1	"	1,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 82½	823.39
May 1	"	3,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947 at 87	2,646.25
May 1	"	10,000	Union Pacific Railroad First Mortgage 4% Bonds of 1947, at 87	8,820.83
May 3	"	5,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 82½	4,136.53
May 6	"	1,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 82½	827.54
May 7	"	2,000	Canada Southern Railway Consolidated Guaranteed Series A 5% Bonds of 1962, at 90½	1,817.50
May 17	"	1,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 83½	836.35
1918				
May 17	Sold	2,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 83	1,667.72
May 17	"	3,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 83	2,501.58
May 17	"	2,000	General Electric 5% Bonds of 1952, at 98	1,978.61
May 17	"	2,000	General Electric 5% Bonds of 1952, at 98¼	1,983.61
May 20	"	2,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996 at 83¼	1,673.39
May 20	"	1,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996 at	836.69
May 20	"	4,000	General Electric 5% Bonds of 1952, at 98¼	4,007.22
May 20	"	1,000	General Electric 5% Bonds of 1952, at 98¼	1,000.56
May 21	"	1,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 83¼	836.81
May 28	"	5,000	General Electric 5% Bonds of 1952, at 98¼	4,972.92

Schedules.

May 29	"	4,000	Norfolk & Western First Consolidated Mortgage 4% Bonds of 1996, at 84⅛	
May 29	"	3,000	General Electric 5% Debenture Bonds of 1952, at 98⅛	3,385.78
June 1	"	4,000	General Electric 5% Bonds of 1952, at 98¼	2,984.17
June 4	"	1,000	General Electric 5% Bonds of 1952, at 98⅛	3,976.11
June 5	"	2,000	General Electric 5% Bonds of 1952, at 98¼	994.17
June 6	"	2,000	Canada Southern Railway First Consolidated Guaranteed Series A 5% Bonds of 1962, at 91⅛	1,980.61
June 7	"	1,000	Canada Southern Railway First Consolidated Guaranteed Series A 5% Bonds of 1962, at 91½	1,850.56
June 11	"	1,000	Canada Southern Railway First Consolidated Guaranteed Series A 5% Bonds of 1962, at 91½	925.42
June 11	"	1,000	Canada Southern Railway First Consolidated Guaranteed Series A 5% Bonds of 1962, at 91½	925.97
June 12	"	6,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 79	3,701.89
1918 June 12	Sold	1,000	General Electric 5% Bonds of 1952, at 97¼	4,839.83
June 13	"	5,000	General Electric Debenture 5% Bonds, at 97½	985.28
June 17	"	5,000	General Electric Debenture 5% Bonds, at 97½	4,927.08
June 18	"	1,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933 at 79½	4,929.86
June 18	"	4,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, 79½	807.13
June 25	"	5,000	Union Pacific Railroad 1st Mortgage 4% Bonds of 1947, at 84½	3,229.50
June 25	"	25,000	Union Pacific Railroad First Mortgage Bonds of 1947, at 84½	4,315.42
July 1	"	1,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 78	21,577.08
July 2	"	2,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 86⅞	798.75
July 9	"	6,000	Southern Pacific First Refunding Mortgage 4% Bonds of 1955, at 78½	4,370.86
July 11	"	3,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 79	4,602.83
July 13	"	1,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 79	2,415.60
July 18	"	1,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 79	805.50
July 24	"	2,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 78	805.88
				1,562.61

Schedules.

July	30	"	5,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955 at 78¼	3,932.36
Aug.	5	"	4,000	Central of Georgia Railway Consolidated Mortgage 5% Bonds of 1945, at 86½	3,567.22
Aug.	5	"	1,000	Central of Georgia Railway Consolidated Mortgage 5% Bonds of 1945, at 86¾	876.81
Aug.	6	"	1,000	Central of Georgia Railway Consolidated Mortgage 5% Bonds of 1945, at 86¾	1,753.89
Aug.	6	"	5,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 80¼	4,000.19
1912 Aug.	8	Sold	9	5,000 Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 86½	4,373.61
Aug.	8	"	14,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 77	10,920.96
Aug.	9	"	1,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 77½	775.47
Aug.	9	"	10,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 77	7,729.72
Aug.	9	"	7,000	Norfolk & Western Railway First Consolidated Mortgage 4% Bonds of 1996, at 80¼	5,725.81
Oct.	15	"	5,000	Southern Pacific First Refunding Mortgage 4% Bonds of 1955, at 79½	4,007.78
Oct.	15	"	5,000	Southern Pacific First Refunding Mortgage 4% Bonds of 1955, at 79½	4,014.68
Oct.	15	"	5,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 89¼	4,570.14
Oct.	17	"	10,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933 at 78	8,270.00
Oct.	17	"	10,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 89	9,218.06
Oct.	18	"	10,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 90¼	9,244.44
Oct.	21	"	3,000	Southern Pacific First Refunding Mortgage 4% Bonds of 1955, at 80½	2,451.67
Oct.	21	"	3,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 90½	2,762.08
Oct.	21	"	2,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 90¾	1,857.22
Oct.	21	"	3,000	Southern Pacific Railroad First Mortgage Refunding 4% Bonds of 1955, at 80¼	2,449.42

Schedules.

Oct. 29	"		3,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 91	2,[illegible] 82
Oct. 30	"		5,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 91	4,[illegible] 06
Oct. 31	"		5,000	Southern Pacific Railroad First Refunding Mortgage 4% Bonds of 1955, at 83	4,110.42
1918					
Jan. 1	Sold	$	4,000	Central of Georgia Railroad Consolidated Mortgages 5% Bonds of 1945, at 92	3,675.00
Jan. 1	"		1,000	Central of Georgia Railroad Consolidated Mortgage 5% Bonds of 1945, at 92	928.75
Jan. 14	"		7,000	Southern Pacific First Refunding Mortgage 4% Bonds of 1955, at 85¼	6,097.19
Jan. 14	"		1,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 86½	876.65
Jan. 14	"		1,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 87	877.88
Jan. 14	"		8,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 86½	6,983.09
Jan. 18	"		10,000	Central of Georgia Railroad Consolidated First Mortgage 5% Bonds of 1945, at 94½	9,448.61
Jan. 19	"		1,000	Central of Georgia Railroad Consolidated First Mortgage 5% Bonds of 1945, at 94½	945.09
Jan. 20	"		2,000	Central of Georgia Railroad Consolidated First Mortgage 5% bonds of 1945, at 94¾	1,890.28
Jan. 20	"		3,000	Central of Georgia Railroad Consolidated First Mortgage 5% Bonds of 1945, at 94½	2,835.42
Jan. 29	"		1,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 85½	868.50
Jan. 29	"		4,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933 at 85	3,439.00
Dec. 2	"		19,000	Central of Georgia Railroad Consolidated First Mortgage 5% Bonds of 1945, at 92½	17,561.81
Dec. 5	"		5,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 84	4,232.50
Dec. 10	"		5,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 84¼	4,268.13
Dec. 10	"		5,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 84¼	4,280.63
Dec. 11	"		3,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 84¼	2,576.25
Dec. 11	"		2,000	Baltimore & Ohio Railroad Convertible 4½% Bonds of 1933, at 84¼	1,717.50
				Total	$ 927,995.96

$1,121,000

Schedules.

SCHEDULE D.

Being a statement of income received by plaintiff trustees.

1917			
Nov.	20	Norfolk & Western R.R. stock rights	$ 200.00
Dec.	8	Coupons, value December 4, 1917	6,592.50
	31	Interest on account with Ladenburg, Thallmann & Co. New York, N. Y. at 3½% from Sept. 30 to Dec. 31, 1917	5,670.02
1918			
Jan.	8	Coupons value January 3, 1918	29,537.50
	9	Coupons value January 8, 1918	3,675.00
	10	Coupons value	1,362.50
	15	Coupons value January 14, 1918	2,200.00
	15	Coupons value January 15, 1918	210.00
	19	Check for December, 1917, dividend 1¾% on 250 shares Consolidated Gas Company of New York	437.50
Feb.	1	February 1918 interest on $50,000 U. S. Government 4% registered gold bonds of 1925	500.00
	1	February 1918 interest on $50,000 U. S. Government 4% registered gold bonds of 1925	500.00
	8	February dividend 2½% on 250 shares of Atchinson, Topeka & Santa Fe R.R. pref.	625.00
	14	February interest on $50,000 U. S. bonds of 1925, value Feb. 1, 1918	500.00
	20	February dividend on 375 shares of Western Pacific R.R. preferred	562.50
	23	Coupons, value Feb. 21, 1918	8,037.50
Mar.	4	March 1918 coupons on $109,000 of Baltimore & Ohio R.R. convertible 4½% bonds of 1933 value March 2, 1918	2,452.50
	4	General Electric Company debentures 5% of 1952, value March 2, 1918	875.00
	4	Coupons	8,927.50
	31	Interest on account with Ladenburgh Thalmann & Co. New York, at 3½% Dec. 31, 1917, to March 31, 1918	1,685.74
Apr.	2	Coupons on $50,000 Norfolk & Western Railway Company 4% bonds of 1996	1,000.00
	2	Coupons on $95,000 of Canada Southern R.R. Conv., guaranteed Series A 5% bonds of 1962	2,375.00
	2	Dividends on 375 shares Western Pacific R.R. pref. value April, 1918	562.50
	4	Coupons, value April 3, 1918	14,542.50
May	2	May 1918 coupons on $95,000 Central of Georgia Railroad Company, Cons. Mortgage 5% bonds of 1945	2,375.00
	2	May 1918 interest on $50,000 U. S. Government 4% bonds of 1925	500.00
	7	Coupons value May 3, 1918	9,300.00
June	3	June 1918 coupons on $5,000 Chicago, Milwaukee & St. Paul general mortg. 4½% bonds of 1989	112.50
	5	Coupons, value of June 3, 1918	7,592.50

Schedules.

1918			
June 12	December 1, 1917, interest on $25,000 Missouri, Kansas & Texas R. R. Company first mortg. 4% bonds of 1990		500.00
30	Interest on account with Ladenburg, Thalmann & Co. New York, at 3½% from March 31 to June 30, 1918		1,066.86
July 2	July 1918 dividend on 375 shares of Western Pac. R.R. pref. value July 1, 1918		562.50
3	July 1918 coupons on $82,000 So. Pac. 1st refg. mtg. 4% bonds of 1955		1,640.00
8	Coupons, value July 2, 1918		14,042.50
8	Coupons, value July 2, 1918		15,060.00
19	Collect. New Haven coupons	$210.00	
	less exchange	.20	209.80
Aug. 2	August 1918 interest on $50,000 U. S. Government 4% bonds of 1925, value August 1, 1918		500.00
21	Coupons, value August 21, 1918		8,037.50
21	Check, Norf. & West. Ry. Co. stk. rights		200.00
Sept. 4	Coupons on $59,000 Baltimore & Ohio R.R. convertible 4½% bonds of 1933		1,327.50
5	Coupons, value September 4, 1918		5,927.50
21	September coupons on $75,000 Chicago, Burlington & Quincy R.R. general mortgage 4% bonds of 1958, value September 4, 1918		1,500.00
21	Coupons on $75,000 Atlantic Coast Line R.R. first mortgage 4% bonds of 1952, value September 4, 1918		1,500.00
23	August 1, 1918, dividend on 250 shares of Atchison, Top. & S. Fe R.R. pref.		625.00
30	Interest on account with Ladenburg, Thalmann & Co. New York, from June 30 to September 30, 1918		953.77
Oct. 2	October Dividend at 1½% on 375 shares of Western Pacific Railway preferred, value Oct. 1, 1918		562.50
2	Coupons on $85,000 Canada Southern Railway Consolidated guaranteed Series A 5% bonds of 1962		2,125.00
3	Coupons on $2,500 St. Louis, Southwestern Railroad general mortgage 5% bonds of 1931, value Oct. 2, 1918		625.00
5	Coupons Value October 3, 1918		13,917.50
Nov. 1	November 1918 interest on $50,000 U. S. Government 4% bonds of 1925		500.00
4	November coupons on $40,000 of Central of Georgia Railroad Consolidated mortgage 5% bonds of 1945, value November 2, 1918		1,000.00
4	Coupons		9,300.00
2	Norfolk & Western Railway Company stock rights		200.00
Dec. 3	Pennsylvania R.R. stock rights		1,125.00
6	June coupons on $25,000 Missouri, Kansas & Texas Railroad, first mortg. 4% bonds of 1990		500.00

Schedules.

1918			
Dec. 7	Coupons, value December 5, 1918		7,592.50
7	December coupons on $5,000 St. Paul 4½% bonds of 1932, value December 6, 1918		112.50
13	Distribution of 66-1/3c. per thousand dollar bond ordered by court on $75,000 of Chicago, Rock Island & Pacific collateral trust 4% bonds of 2002		49.75
18	Consolidated Gas Company of New York stock rights		437.50
31	Interest on account with Ladenburg Thalmann & Co. New York, at 3½% from September 30 to December 31		688.75
1919			
Jan. 3	January 1919 dividend on 375 shares Western Pacific Railroad preferred at 1½%		562.50
9	Coupons collected, value of Jan. 6		26,115.00
10	Collect New Haven	$1,575.00	
	exchange	1.57	1,573.43
31	Interest on account with Ladenburg, Thalmann & Co. New York, at 3½% from Dec. 31, 1918 to Jan. 31, 1919		219.13
	Total		$316,637.57

SCHEDULE E.

Being a statement of payments made by plaintiff trustees.

1917			
Nov. 12	Paid to Springfield Fire & Marine Ins. Co. Western Dept. Chicago		$240,329.24
12	Paid to Milwaukee Mechanics Ins. Co. Milwaukee		153,408.35
12	Paid to Concordia Fire Ins. Co. Milwaukee		65,707.43
12	Paid to Security Ins. Co. of New Haven, Conn.		51,435.69
12	Paid to Springfield Fire & Marine Ins. Co. Springfield		30,946.43
13	Bought $1,000 Chicago & West Ind. 4's 1952 63½		650.92
14	Paid Rome Ins. Co. as per letter of 11/18		19,889.88
30	Paid to O. Ehmann		2,377.50
Dec. 21	Paid to Hanover Fire Ins. Co		160,927.25
27	Check #8049 to Munich Re-Insurance Co		10,286.26
27	Check #8050 to Munich Re-Insurance Co		10,658.09
28	Paid to Germania Fire Ins. Co		75,212.60
28	Check #8047 to Munich Re-Insurance Co		7,068.32
31	Check #8048 to Munich Re-Insurance Co		10,546.63
31	Check #8051 to Munich Re-Insurance Co		19,810.54
31	Transfer to regular account Munich Re-Insurance Co.		5,670.02

Schedules.

1918			
Jan.	7	Check #8052 to Munich Re-Ins. Co.....	19,697.73
	19	Paid to Germania Fire Ins. Co.....	33,492.45
	26	Paid to Hartford Fire Ins. Co. Hartford.....	28,337.50
Feb.	11	Paid to First Re-Inc. Co. of Hartford.....	79,783.38
	28	Paid to Citizens Ins. Co. Hartford.....	75,000.00
Mar.	22	Paid to Ins. Co. of the State of Penn., Phila.	31,605.34
	22	Paid to First Ins. Co. of Hartford.....	42,855.34
	31	Transfer to regular account Munich Re-Insurance Co.	1,685.74
Apr.	11	Paid to Citizens Ins. Co. Hartford.....	46,652.69
	19	Paid to Ins. Co. of the State of Penn., Phila.	495,588.05
	19	Paid to Firemen's Ins. Co. Newark.....	46,253.53
May	4	Paid to Ins. Co. of the State of Pa.....	5,458.90
	4	Paid to Firemen's Ins. Co. Newark.....	12,793.50
	11	Paid to Firemen's Ins. Co. Newark.....	17,918.23
	11	Paid to Firemen's Ins. Co. Chicago.....	18,242.37
	20	Difference in interest on sale of $5,000 Gen. Elect. 5's 1952 M. S. figured as J. J. 4 mos. 19 days should be 2 mos 19 days.....	41.67
	24	Paid to First Re-Ins. Co. Hartford.....	17,975.37
	24	Paid to Ins. Co. of State of Penn., Phila.....	18,456.71
	24	Paid to Ins. Co. of State of Penn., J. S. Frelinghuysen, Gen. Agents.....	5,425.85
	25	Paid to Ins. Co. of State of Penna., Phila.....	19,555.91
June	8	Paid to Firemen's Ins. Co. Newark.....	14,711.98
	8	Paid to Firemen's Ins. Co. Chicago.....	11,603.83
	25	Paid to First Re-Insurance Co. Hartford...	3,575.22
	25	Paid to Ins. Co. of the State of Penn., Phila.	23,707.69
1918			
June	30	Transfer to regular account of Munich Re-Insurance Co.....	1,066.86
July	1	To cash in lieu of July 1, 1918, interest on $1,000 So. Pac. Ref. 4s, 1955, sold.....	20.00
	22	Paid to Ins. Co. of the State of Penn., N. Y.	2,162.83
	22	Paid to Firemen's Ins. Co. Chicago.....	10,483.69
	22	Paid to Ins. Co. of the State of Penn., Phila.	15,048.04
	22	Paid to Firemen's Insurance Co., Newark....	8,007.06
Aug.	10	Paid to Firemen's Ins. Co. Chicago.....	15,067.14
	10	Paid to Home Ins. Co. N. Y.....	2,995.25
Sept.	4	Paid to Ins. Co. of the State of Penn., Phila.	13,462.77
	4	Paid to Firemen's Ins. Co. Newark.....	6,685.10
	12	Paid to Firemen's Ins. Co. Newark.....	7,978.43
	28	Paid to Firemen's Ins. Co. Newark.....	6,442.12
	26	Paid to Firemen's Ins. Co. Newark.....	6,502.84
	30	Transfer to regular account of Munich Re-Insurance Co.....	953.77
Oct.	4	Transfer to regular account of Munich Re-Ins. Co. September coupons on $50,000 B & O c. 4½ 1933 value September 4.....	1,327.50
	15	Paid to Insurance Co. of the State of Penn., Phila.	15,616.61
	28	Paid to Insurance Co. of the State of Penn., Phila.	8,468.24
Nov.	18	Paid to Firemen's Ins. Co. Chicago.....	53,731.11
	18	Paid to Firemen's Ins. Co. Newark.....	45,328.41
Dec.	2	Paid to Ins. Co. of the State of Penn., Phila.	13,087.23
	2	Paid to Firemen's Ins. Co. Chicago.....	5,438.30
	3	Paid to Firemen's Ins. Co. Newark.....	7,308.05
	18	Paid to Ins. Co. of the State of Penn., Phila.	11,606.02
1919			
Jan.	7	To charges on coupons sent to New Haven....	.40
		Total	$1,748,131.00

134 SCHEDULE F.

Summary Statement of Account.

Cash and part value of securities received by these trustees as per Schedule "A"		$6,478,168.0
Par value of securities in the possession of the trustees as per Schedule "B"	$4,104,675.00	
Par value of securities sold by trustees as per Schedule "C"	1,123,000.00	5,227,675.0

Statement of Moneys Received.

Received from sale of securities as per Schedule "C"	$927,095.9
Received income as per Schedule "D"	316,637.5
Total moneys received by trustees	$1,243,733.5
Payments made by trustees as per Schedule "E"	1,748,131.0

XII. That the items set forth in the foregoing account are co rect, but that the account is not complete, that the plaintiff truste are unable to submit a full, true and accurate account because th defendant A. Mitchell Palmer as Alien Property Custodian ha seized and holds in his possession the books of account, records an other papers containing the record of all transactions of the truste with respect to said trust fund.

XIII. That these plaintiffs have joined herein as defendants al persons, firms, associations and corporations known to them
135 who as policy holders or creditors, or otherwise, have o claim, or either now or at some future time might have o might claim to have any right against the plaintiffs as such truste or any right or interest, legal or equitable, against, in or in respec of the said trust funds, or some part thereof, now in the possessio or under the control of the trustees under said trust deed.

On information and belief, that the following defendants ar corporations organized and existing under and by virtue of the law of the State of Connecticut: Aetna Insurance Company, Aetn Life Insurance Company, Hartford Fire Insurance Company, Trav ellers Life Insurance Company and the Security Insurance Com pany of New Haven.

On information and belief, that the defendants American In surance Company and Firemans Insurance Company are corpora tions organized and existing under and by virtue of the laws of th State of New Jersey.

On information and belief, that the defendants Milwaukee Me chanics Insurance Company of Wisconsin and the Concordia Fir Insurance Company are corporations organized and existing unde and by virtue of the laws of the State of Wisconsin.

On information and belief, that the defendant Pacific Mutua

ife Insurance Company is a corporation organized and existing
nder and by virtue of the laws of the State of California; that the
efendant Citizens' Insurance Company of Missouri is a corporation
rganized and existing under and by virtue of the laws of the
tate of Missouri; that the defendant The Insurance Company of
he State of Pennsylvania is a corporation organized and existing
under and by virtue of the laws of the State of Pennsylvania;
136 that the defendant United States Fidelity & Guaranty Com-
pany is a corporation organized and existing under and by
irtue of the laws of the State of Maryland; that the defendant
pringfield Fire and Marine Insurance Company is a corporation
rganized and existing under and by virtue of the laws of the State
f Massachusetts.

On information and belief that the following defendants are cor-
orations organized and existing under and by virtue of the laws
f the State of New York; Agricultural Insurance Company, Na-
ional Liberty Insurance Company, Pacific Fire Insurance Company,
Buffalo Insurance Company, The Fidelity & Casualty Company of
New York, Preferred Accident Insurance Company of New York,
Flint & Co., Inc., and Leaycraft & Co., Continental Fire Insurance
Company, Hanover Fire Insurance Company, Home Insurance Com-
pany, United States Casualty Company.

On information and belief, that at all the times hereinafter men-
ioned the following named persons, firms and corporations, to wit:
James Crosby Brown, Howland Davis, James M. Edwards, M.
Orme Wilson, Horace Havemeyer, Thomas H. Kelly, James L.
Laidlaw, John T. Terry, John E. Berwind, Adrian Iselin, Jr., Ernest
Iselin, Lewis Iselin and Columbus O'Donnell Iselin, co-partners do-
ing business under the firm name and style of A. Iselin & Co.;
Adrian Iselin, Jr., J. D. Barrett, H. H. Rogers, W. R. Peters, Frank
A. Vanderlip, Howard P. Sweetser, P. A. S. Franklin, Arthur B.
Claflin, Charles N. Lee, William Sloane, J. Ogden Armour, Joseph
J. O'Donohue, Jr., W. B. Thomas, J. Adolph Mollenhauer,
137 O. M. Mitchell, G. S. Dearborn, Flint & Co., Edward C.
Hoyt, Warren G. Horton, Lewis H. Lapham, Carleton H.
Palmer, Stephen Loines, William E. Iselin, William P. Clyde, H.
A. Berwind, Charles M. Smith, S. De Ridder, Edmund Trouton,
Leaycraft & Co., Adolph Norden; Louis Watjen and Stephen Ed-
ward Nash, co-partners doing business under the firm name and
style of Watjen, Toel & Co., Robert K. Smith, Louis Watjen, Henry
R. Mallory, Silas D. Webb, Orville T. Waring, H. St. John Webb,
George H. Ware, Edward L. Tucker, Charles D. Lanier, John Pier-
pont Morgan, Edward T. Stotesbury, Charles Steele, Henry P.
Davison, Arthur E. Newbold, William Pierson Hamilton, William
H. Porter, Thomas W. Lamont, Horatio G. Lloyd, Dwight W.
Morrow, Edward Stettinius and Thomas Cochran, doing business
under the firm name and style of J. P. Morgan & Co.; Henry P.
Davidson, J. Pierpont Morgan, Lewis Iselin, Levi P. Morton, Walter
P. Bliss, George B. Agnew, W. Redmond Cross, William B. Good-
win, Herman S. Crossman, Frederick W. White, James Frown, C.

S. Mathews, Seth M. Milliken, Louis Muller, F. A. Meyer, Charle
A. O'Donohue, Stephen W. Carey, Bernard McCloskey, James F
Post, James B. Dickson, Charles W. McCutcheon, Joseph M. Cudah
Charles T. Torrey, John D. Ryan, Herbert Appelton, Alba B. John
son, James Dobson, W. J. McCahan, Robert H. McCurdy, Samu
Sloan, Edward T. Bedford, Louis F. Swift, B. N. Baker, John F
Hurst, F. W. Wood, E. Levering & Co., Eugene Blackford
138 Alex J. Godby, William H. Dix, Charles C. Homer, Jr
Joshua Levering, F. W. Wilson & Son, Edwin F. Atkins
Blanchard Randall, R. Brent Keyser, Waldo Newcomer, Edward
H. Sanford, Douglass F. Cox and S. T. Morgan

were separate insurers and underwriters associated and doing busi
ness under the name and style of "United States Lloyds," insur
ing against loss or damage to property by fire; that each of the afore
said underwriters was duly represented and acted through the de
fendants Herbert Appleton and Douglass F. Cox, and that their
business as such underwriters was and now is conducted and man
aged by the said defendants Herbert Appleton and Douglass F
Cox as their duly authorized attorneys in fact.

That the persons, firms, associations and corporations which are
joined herein as defendants, other than Munich Re-Insurance Com
pany, Walter T. Rosen and A. Mitchell Palmer, have been thus made
defendants as being persons, firms, associations and corporations who
as policy holders or creditors, or otherwise, have or claim, or have
had such business transactions with the defendant Munich Re-In
surance Company that they may now have or at some future time
might have or might claim to have, some right against the plain
tiffs as such trustees, or some right or interest, legal or equitable
against, in or in respect of said trust fund, or some part thereof,
now in the possession or under the control of the trustees under
said deed of trust.

139 That A. Mitchell Palmer has been made a defendant herein
because as Alien Property Custodian appointed under the
Act of Congress entitled "Trading with the enemy Act" approved
October 6, 1917, he has demanded and now demands that the plain
tiff trustee and said defendant trustee Walter T. Rosen transfer,
assign, deliver and pay over to him as such Allien Property Cus
todian all the securities and property held by the said trustees under
said trust deed, to be by him held, administered and accounted
for as provided by law.

That the defendant, Walter T. Rosen, is jointly interested with
the plaintiffs as co-trustee, in this cause of action; that before bring
ing this action said plaintiff trustees requested said defendant,
Walter T. Rosen, to join as a co-plaintiff herein, but he refused so
to do, and therefore, is made a defendant.

That the plaintiffs herein believe that there may be certain other
persons, firms, associations and corporations who as policy holders
or creditors in the United States have or claim, or either now or
at some future time might have or might claim to have some right
against the plaintiffs as such trustees, or some right or interest,

legal or equitable, against, in or in respect of the said trust funds, but whose names are unknown to these plaintiffs; that the said persons, firms, associa-ions and corporations have been described and designated herein as defendant or defendants Blank Company, Doe & Roe, John Doe, Jane Doe, Richard Roe, Jane Roe, Richard Styles and Rebecca Styles, all unknown to these plaintiffs, and such persons so designated are intended to be any and all persons, firms associations and corporations not herein specifically joined
140 who, individually or in any fiduciary capacity, as policy holders or otherwise, have or claim to have, or have had such business transactions with the defendant Munich Re-Insurance Company that they may now have or at some future time might have or might claim to have, some right against the plaintiffs as such trustees, or some right or interest, legal or equitable, against, in or in respect of the said trust fund.

XIV. That the defendant Munich Re-Insurance Company has ceased doing business in the United States and that the plaintiff trustees desire to wind up their trust as such trustees and to turn over the trust funds held under the said trust deed to the persons, firms, associations and corporations entitled thereto.

Second.

For a Second Cause of Action.

XV. That the plaintiffs repeat and re-allege as part of this cause of action each and all of the allegations contained in paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X and XIII of the first cause of action, with like effect as if herein fully re-alleged, and incorporate herein all the facts therein set forth.

XVI. That on or about April 6, 1917, the existence of a state of war between the governments of the United States of America and the German Empire was declared.

XVII. That the defendant A. Mitchel Palmer was duly appointed, has qualified and was at all the times hereafter mentioned
141 and now is acting as Alien Property Custodian under the provisions of the Act of Congress entitled "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued pursuant thereto.

XVIII. That on or about February 12, 1919, the said defendant A. Mitchell Palmer demanded that the said plaintiffs and said defendant Walter T. Rosen transfer, assign, deliver and pay over to him as Alien Property Custodian all the securities and properties held by them under the said trust deed to be held by him, administered and accounted for as provided by law; that said demand has not been revoked or withdrawn.

XIX. That the trustees now have in their possession securities of the par value of $4,104,675, and cash deposited with Ladenburg,

Thalmann & Co. of New York amounting to $78,545.83, with all additions thereto and accrued interest at the rate of 3½%, which said securities and money are held by the said trustees pursuant to the provisions of the said statutes of the State of Connecticut and the said trust deed.

XX. That many claims against the defendant Munich Re-Insurance Company by policy holders and creditors in the United States are now outstanding and unpaid. That the plaintiffs cannot state the exact amount of these claims, but allege, on information and belief, that the same aggregate several hundred thousand dollars.

XXI. That under the provisions of the agreements, treaties and contracts entered into by said defendant Munich Re-Insur-
142 ance Company as aforesaid, the said defendant is liable for all losses occurring during the period covered by such agreements, treaties, and contract, and claims based on such losses may be made after the termination of such agreements, treaties and contracts. By reason of these facts, it is not now possible to ascertain the amount of claims against the said defendants which may be asserted by policy holders and creditors in the United States but a large number of such agreements, treaties and contracts was entered into by the said defendant, the amount of the risks thus insured against was far in excess of the value of the said trust funds, and the plaintiffs therefore allege that such claims against the said plaintiffs may aggregate an amount equal to or in excess of the value of the said trust fund.

Wherefore the plaintiff trustees pray judgment that their accounts as such trustees as aforesaid be passed by and under the direction of this Court and that this Court by its decree discharge them as such trustees as aforesaid from all liability, responsibility and accountability for all of their and each of their acts and doings as such trustees, and that this Court make its decree as to the disposition of the funds and assets now in the hands or under the control of said trustees as above set forth, and that these plaintiffs be allowed a reasonable allowance for their services as such trustees, and their costs and expenses in this action; and the plaintiffs further pray judgment that this Court will instruct them as to their duties as trustees and as to whether, pending the judicial settlement of their
accounts and their discharge as such trustees, they ought to
143 continue to hold the said moneys, securities and property now in their hands, or any part thereof, for the security and protection of the policy holders and creditors of the said defendant Munich Re-Insurance Company in the United States, or whether they should transfer, assign, deliver and pay over the moneys, securities and property now in their hands to the said defendant A. Mitchell Palmer as Alien Property Custodian; and for such other, further and general relief as to this Court may seem just and proper.

ROOT, CLARK, BUCKNER & HOWLAND,
Plaintiffs' Attorneys.

Office and Post Office Address, 31 Nassau Street, Borough of Manhattan, New York City.

STATE OF NEW YORK,
County of New York, ss:

Rudolf Metz, being duly sworn, deposes and says, that he is one of the trustees above named; that he has read the foregoing complaint and knows the contents thereof; and that the same is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

RUDOLF METZ.

Sworn to before me this 3rd day of March, 1919.

WILLIAM HAMPEL,
[SEAL.] #30, *Notary Public, County of N. Y.*

144 *Opinion.*

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$70,000 PAR VALUE BONDS, etc.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$25,000 PAR VALUE CHESAPEAKE & OHIO BONDS, etc.

Francis G. Caffey, United States Attorney, Proctor for libellants; La Rue Brown, Spier Whitaker and Earl B. Barnes, Counsel.
Root, Clark, Buckner & Howland, Proctors for claimants; Emory R. Buckner, S. W. Howland and Clinton Combes, Counsel.

AUGUSTUS N. HAND, *District Judge:*

These two libels are brought under Section 17 of the Trading with the Enemy Act to obtain the aid of this Court in securing the possession of property determined by the Alien Property Custodian
145 after investigation to be held for or on behalf of or for the benefit of the Munich Insurance Company, a German Corporation and an alien enemy.

The Munich Insurance Company sought to do business in the State of Connecticut. The Statutes of that State forbade any insurance company to expose itself to loss on any one risk to an amount exceeding ten per cent of its paid up capital and provided that the capital of a foreign insurance company should be: (*a*) Money or securities deposited with the treasurer of the state or with the proper officer of some other state, the minimum amount of such deposit to be $200,000. (*b*) All sums loaned on real estate security in any

state of the United States in which fire insurance companies organized under the laws of Connecticut might invest, "provided such real estate, securities and assets shall be held in the United States by trustees who are citizens of the United States approved by the Insurance Commissioner, for the benefit of all its policy holders and creditors in the United States."

By reason of the statute the Munich Insurance Company executed a trust deed which required the trustees to receive and safely keep all assets and property from time to time delivered to them, "the same to be held, used and appropriated to and for satisfying the purposes in the act of the Legislature above mentioned."

Article Fourth of the trust deed provides: "If at any time debts and liabilities for the security of which this trust is created, shall accrue and become due and payable by the Company, and shall not be otherwise satisfied and paid, the trustees shall have power to
146 appropriate so much of the said trust property as may be necessary to the payment and satisfaction thereof, but no alleged debt or liability shall be so paid or satisfied unless and until the amount and validity of the said alleged debt or liability have been admitted by the Company, or until the validity and amount thereof have been established by the claimant in due course of law." Article Ninth of the trust deed describes the rights of the Insurance Company in the corpus of the trust:

"Ninth. After making due provision for the purposes aforesaid and subject to the provisions hereinbefore contained, the trustees shall stand possessed of the said trust fund, at the control and subject to the order of the Company, and shall and will use and dispose of the same as the Company may direct or appoint. But it is hereby expressly declared and provided, that until all the outstanding liabilities and obligations of the Company, absolute or contingent, to policy holders or creditors in the United States, are fully paid and discharged, the said trust fund or so much thereof as may be necessary to cover the outstanding liabilities, shall remain in the possession of the trustees, for the security and protection of the said policy holders and creditors, anything herein contained to the contrary notwithstanding."

The trustees are the claimants of about $4,000,000 of cash and securities. The cash is on deposit with Ladenburg, Thalman & Co., subject to the order of the trustees and the securities are in safe deposit boxes rented by the trustees of the National Park Bank.
147 Section 7 (c) of the Trading with the Enemy Act provides that: "If the President shall so require any money or other property * * * and rights and claims of every character and description owing or belonging to or held for, by, on account of or on behalf of, or for the benefit of an enemy or ally of enemy * * * which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this act."

Both sides agree that Section 17 of the Trading with the Enemy Act which empowers this Court to issue such process as may be necessary and proper to enforce the act affords ample jurisdiction to adjudicate the rights of the parties. The attempt of the Alien Property Custodian is not to try title but to obtain possession of the cash and securities which are withheld after specific demand. The libellant insists that Section 9 of the Act preserves all the substantive rights of the claimants which the change of possession in no wise interferes with.

This section is as follows:

"Sec. 9. That any person, not an enemy, or ally of enemy claiming any interest, right or title in any money or other property which may have been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered or
148 paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said Custodian a notice of his claim under oath and in such form and containing such particulars as the said Custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owners of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: Provided that no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the District Court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which a suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant) to establish the interest, right, title or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or
149 ally of enemy, against whom such interest, right or title is asserted, or debt claimed, shall be retained in the custody of the Alien Property Custodian or in the treasury of the United States, as provided in this act, and until final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the Alien Property Custodian, or Treasurer of the

United States or order of the Court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminates."

"Except, as herein provided, the money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process or execution or subject to any order or decree of any Court."

* * * * * * *

To safeguard persons who deliver property to the Alien Property Custodian Section (7*e*) provides that:

"Any payment * * * or delivery of money or property made to the Alien Property Custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of the same."

I think the statute entitles the Alien Property Custodian to assert his possessory right and the trustees are given adequate protection under Section 9 of the Act. It is not necessary for me to go so far as to say that is a determination of this official upon undisputed facts were legally incorrect it would be enforced by the Courts
150 merely because his investigation had been made in good faith. Here there can be no doubt that the property belongs to an enemy alien corporation subject to the lien of the trustees. The trust deed in this case created no more than a possessory lien without right on the part of the trustees to enforce it. The trustees hold the securities solely for convenience, because the creditors sought to be protected are contingent and numerous. The illustration of an agister's lien with no right except to hold is apposite. The rights to apply the property upon admission of indebtedness by the Company or after decree of Court are the rights of mere passive trustees or custodians.

Under such circumstances I think Section 8*a* of the statute by intendment cuts away from the trustees any power to resist this proceeding of the Alien Property Custodian to secure possession. As originally drafted Section 8 (*a*) provided:

"That any person not an enemy or ally or enemy holding a mortgage, pledge or lien on, or other right in the nature of security in property of an enemy or ally or enemy, may, after default, dispose of such property under such rules and regulations and after such notice as the Secretary of Commerce shall prescribe; and such notice shall have in all respects the same force and effect as if duly served upon the enemy or ally of enemy personally" * * *

This clause was objectionable because departmental regulations were substituted for the method of liquidating ordinary liens afforded by state laws or the agreement of the parties and the section as finally enacted preserved the remedies of lienors but only in a limited class of cases where the "mortgage, pledge or lien or other right in
151 the nature of security in property of an enemy or ally of enemy" was one "which by law or by the terms of the instrument creating such mortgage, pledge or lien, or right, may be disposed of on notice or presentation or demand" (Section 8*a*). It is

clear I think that no such mere right to hold as the trustees in the present case possessed was covered by the terms of this provision. Disturbance of bank loans, secured by collateral, by any novel mode of liquidation and interference with foreclosure of ordinary mortgages might have seriously interfered with normal financial operations by American citizens. Consequently the Act was redrafted so as to allow such liens to be enforced in the customary way. No such reason existed for excepting a lien like the one under consideration and the failure to except it under familiar principles rendered the property subject to it liable to seizure as a part of the property of the alien enemy to which the Alien Property Custodian was given a right of possession by the statute. "Expressio minus exclusio alterius." United States vs. Arredondo, 6 Pet. at P. 725; Stevens vs. Smith, 100 Wall., 321; Raleigh, etc., R. R. Co. vs. Reid, 13 Wall., 269; United States vs. County of Macon, 99 U. S., 582; Dewhurst vs. Foilden, 7 M. & G., 182. If the Custodian was not entitled to possession of pledged property not within this provision, what was the purpose or need of the provision?

After transfer there can be no doubt that the trustees may assert any rights they have under Section 9 of the Act to obtain such property as may be necessary to protect American creditors secured by the deed of trust. An adjudication by this Court goes no further than to award possession to the Alien Property Custodian subject to all existing rights which may be asserted under section 152 9, supra.

The effect of my decision is to hold that the statute gives the right to the Alien Property Custodian to obtain possession of enemy owned property irrespective of the existence of liens thereon unless such liens may be disposed of on notice or presentation or demand. In enacting this statute under the War Power Congress doubtless realized the fact that much enemy owned property was subject to possessory liens of various kinds and that the Act would be quite ineffective if third persons, in many cases business associates of the enemy aliens, could indefinitely hold their property or compel a trial on the merits, before transfer of possession could be awarded. Consequently a right to retain possession was given only to those lienors whose business requirements naturally demanded it. Such persons as the trustees here are not of the prescribed class and consequently their right to retain possession as against the Alien Property Custodian must fail.

I may add that the facts here involved do not render the decisions in the cases of Salamander Insurance Co. vs. N. Y. Life Ins. & Trust Co., 254 Fed., 852; Keppleman vs. Keppleman, 105 Atl. Rep., 140, or American Exchange National Bank vs. Palmer (unreported) applicable to this case.

It is urged that the Alien Property Custodian must fail because the answer denies that he made any investigation. This denial is a mere conclusion in view of the further allegation that he knew all the facts which have been rehearsed above. Such complete and correct information was equivalent to and involved investigation. I think the allegations of the answer show not only that he

must have made an investigation, but that he reached a right
153 conclusion under the statute. He is therefore entitled to a decree on the leadings awarding possession, which is granted accordingly.

July 29, 1919.

A. N. H.,
U. S. D. J.

Decree.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, Held at the United States Court Rooms, in the City of New York, in the Said District, on the 6th day of October, in the year of our Lord one thousand nine hundred and nineteen.

Present:

Hon. August N. Hand, District Judge.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

This cause came on to be heard at this Term and was argued by counsel and thereupon upon consideration thereof it was
154 ordered, adjudged and decreed as follows, viz.:

That the libellant herein have judgment awarding to him the possession of the bonds, stocks and other securities described in Exhibit A annexed to the libel herein, to be by him held, administered and accounted for as Alien Property Custodian;

That the United States Marshal for the Southern District of New York deliver to the libellant as Alien Property Custodian the bonds, stocks and other securities described in Exhibit A annexed to the libel herein and heretofore seized by him; and the libellant's costs having been duly taxed herein in the sum of $65.60, it is

Further Ordered, Adjudged and Decreed that the libellant recover of the claimants, J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as trustees, and of the Massachusetts Bonding and Insurance Company, the stipulator for costs herein, the sum of $65.60, as costs duly taxed and that execution issue therefor; it is

Further Ordered, Adjudged and Decreed that unless an appeal be taken from this decree on behalf of the claimants within the time fixed by the rules of this Court, the stipulator for costs on the part of the claimants shall cause the engagement of its stipulation to be performed or show cause within four days' time why judgment and execution shall not issue against it, its goods, chattels and accounts for the satisfaction of this decree; it is

Further Ordered, Adjudged and Decreed that all proceedings

herein shall be without prejudice to the claimants or to any
155 other persons with respect to any claims they may see fit to file with the Alien Property Custodian pursuant to section 9 of the Trading with the Enemy Act, or any suit they may see fit to institute thereunder after the filing of their claims; it is

Further Ordered, Adjudged and Decreed that during ten days from the date hereof and in the event that an appeal shall be taken from this decree within said time, pending said appeal, the libellant herein and the United States Marshal be and they hereby are stayed from taking any action in execution of this decree.

Enter.

AUGUSTUS N. HAND,
U. S. D. J.

156 *Assignments of Errors.*

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

Now come the Claimants in the above entitled cause and file the following Assignment of Errors upon which they will rely upon their prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court and entered on the 6th day of October, 1919:

1. The Court erred in granting the motion of libellant for a decree on the pleadings.

2. The Court erred in not denying the motion of libellant for a decree on the pleadings.

3. The Court erred in not holding that the libel of information failed to state a cause of action upon the ground that it contained no allegation that the property libelled was money or other property or a right or claim of any character or description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a
157 license granted by the President, within the meaning of Section 7-*c* of the Trading with the Enemy Act.

4. The Court erred in holding that the denial (contained in paragraph 2 of the answer) that the determination of the libellant was made after investigation was a denial of a conclusion.

5. The Court erred in not holding that the said denial (contained in paragraph 2 of the answer) that the determination of the libellant was made after investigation was a denial of an allegation essential

to the libellant's cause of action and therefore a sufficient ground for denying a decree on the pleadings.

6. The Court erred in holding that the denial (contained in paragraph 2 of the answer) that the determination of the libellant was made pursuant to the authority of the Trading with the Enemy Act was a denial of a conclusion.

7. The Court erred in not holding that the said denial (contained in paragraph 2 of the answer) that the determination of the libellant was made pursuant to the authority of the Trading with the Enemy Act was a denial of an allegation essential to the libellant's cause of action and, therefore, a sufficient ground for denying a decree on the pleadings.

8. The Court erred in holding that the denial (contained in paragraph 3 of the answer) that the requirement of the libellant was made after investigation was a denial of a conclusion of law.

158 9. The Court erred in not holding that the said denial (contained in paragraph 3 of the answer) that the requirement of the libellant was made after investigation was a denial of an allegation essential to the libellant's cause of action and therefore a sufficient ground for denying a decree on the pleadings.

10. The Court erred in not holding that paragraphs 1 to 8 inclusive of the answer contain denials of essential allegations of the complaint, and are therefore a sufficient ground for denying a decree on the pleadings.

11. The Court erred in holding that the allegations of paragraphs 9 to 40 inclusive of the answer did not set forth a sufficient affirmative defense to the libel.

12. The Court erred in failing to hold that the allegations of paragraphs 9 to 40 inclusive of the answer set forth a sufficient affirmative defense in that they affirmatively establish that the property libelled was not money or other property or a right or claim of any character or description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President, within the meaning of Section 7-*c* of the Trading with the Enemy Act.

13. The Court erred in holding that the regulations of the Insurance Commissioner of the State of Connecticut as set forth in paragraphs 21 and 22 of the answer, did not constitute a sufficient affirmative defense to the libel herein.

159 14. The Court erred in holding that the regulations of the Insurance Commissioner of the State of Connecticut as set forth in paragraphs 21 and 22 of the answer, taken in connection with the other affirmative allegations contained in paragraphs 9 to 40 inclusive of the answer, did not constitute a sufficient affirmative defense to the libel herein.

15. The Court erred in not holding that the determination contained in the demand of the Alien Property Custodian, dated October 28, 1918, a copy of which is annexed to the answer as Exhibit 4, which said demand is set forth in paragraph 24 of the answer, is inconsistent with the alleged later determination of the libellant upon which the libel is based, and precluded the said libellant from validly making the determination set forth in paragraph 2 of the libel herein.

16. The Court erred in holding that the advice of counsel, as alleged in paragraph 27 of the answer, does not constitute a sufficient defense to the libel herein.

17. The Court erred in holding that the advice of counsel as alleged in paragraph 27 of the answer, taken in connection with the other affirmative allegations contained in paragraphs 9 to 40 inclusive of the answer, does not constitute a sufficient defense to the libel herein.

18. The Court erred in holding that the inquiry of the claimants of the Insurance Commissioner of the State of Connecticut, and the failure of the said Insurance Commissioner to reply thereto, as set forth in paragraph 28 of the answer, does not constitute a defense to the libel herein.

160 19. The Court erred in holding that the inquiry of the claimants of the Insurance Commissioner of the State of Connecticut, and the failure of the said Insurance Commissioner to reply thereto, as set forth in paragraph 28 of the answer, taken in connection with the other affirmative allegations contained in paragraphs 9 to 40 inclusive of the answer, does not constitute a defense to the libel herein.

20. The Court erred in not holding that in order to comply with the provisions of Section 7-*c* of the Trading with the Enemy Act requiring an investigation by the Alien Property Custodian, the Custodian must give notice of hearing to the parties in interest and an opportunity to such parties to defend and protect their rights.

21. The Court erred in not holding that the Trading with the Enemy Act could not without contravening the due process clause of the Constitution, provided that the Custodian could determine that property is of an enemy character without giving notice of hearing to the parties in interest and an opportunity to such parties to defend and protect their rights.

22. The Court erred in not holding that the allegations of paragraph 32 of the answer were a sufficient affirmative defense to the libel herein, on the ground that such allegations affirmatively show that libellant did not comply with the true intent and meaning of the provisions of Section 7-*c* of the Trading with the Enemy Act requiring investigation on his part as a condition precedent to a demand or requirement under the Act.

161 23. The Court erred in not holding that the allegations of paragraph 32 of the answer, taken in connection with the other affirmative allegations contained in paragraph 9 to 40 inclusive of the answer, were a sufficient affirmative defense to the libel herein, on the ground that such allegations affirmatively show that libellant did not comply with the true intent and meaning of the provisions of Section 7-*c* of the Trading with the Enemy Act, requiring investigation on his part as a condition precedent to a demand or requirement under the Act.

24. The Court erred in not holding that the alleged determination by the Alien Property Custodian was shown by the allegations of the answer to be arbitrary, in excess of the libellant's authority and without any evidence in its support, and hence insufficient to comply with the requirements of the Trading with the Enemy Act.

25. The Court erred in holding that the allegations of the answer showed that the Alien Property Custodian must have made such investigation as was contemplated by the Trading with the Enemy Act.

26. The Court erred in not holding that the investigation contemplated by Section 7-*c* of the Trading with the Enemy Act includes investigation not only of the questions of fact involved, but also of the questions of law involved, and that consequently the mere fact that the libellant is alleged to have known all the pertinent facts, does not show that he has made such investigation as is contemplated by Section 7-*c* of the Trading with the
162 Enemy Act.

27. The Court erred in holding that in determining the sufficiency of the answer herein, the denials in the said answer could be deemed in any way controlled, qualified, modified or affected by any other allegations set up in the answer by way of an affirmative defense; and in particular erred in holding that the denial (contained in paragraphs 2 and 3 of the answer) that the libellant had made such investigation as was contemplated by Section 7-*c* of the Trading with the Enemy Act is in any way controlled, qualified, modified or affected by any of the allegations in the said answer by way of affirmative defense, or by any of the allegations contained in paragraphs 9 to 40 inclusive of the said answer, or in particular by any of the allegations contained in paragraphs 34 and 35 of said answer.

28. The Court erred in not holding that the investigation and determination of the libellant were void and without jurisdiction in that the said libellant had no jurisdiction of the property libelled because *of* it was not money or other property or right or claim of any character or description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of any enemy or ally of enemy not holding a license granted by the President.

29. The Court erred in not holding that the enemy interest in the property libelled herein was a beneficial interest in a trust within the meaning of the third paragraph of Section 7-*c* of the Trading with the Enemy Act, and subject to the provisions of the said paragraph exclusively, and not subject to the provisions of the first paragraph of Section 7-*c* of the Trading with the Enemy Act.

163 30. The Court erred in not holding that the property libelled herein was subject to a lawful mortgage, pledge or lien, or other right in the nature of security in favor of a person not an enemy or ally of enemy, and hence subject to the provisions of Section 8-*a* of the Trading with the Enemy Act exclusively and not subject to the provisions of the first paragraph of Section 7-*c* of the said Act.

31. The Court erred in not holding that the investigation and determination of the libellant were void and without jurisdiction in that the property libelled was not subject to the jurisdiction of the libellant by reason of the fact that the enemy interest in the property libelled herein was a beneficial interest in trust within the meaning of the Third Paragraph of Section 7-*c* of the Trading with the Enemy Act, and subject to the provisions of the said paragraph exclusively, and not subject to the provisions of the first paragraph of Section 7-*c* of the Trading with the Enemy Act.

32. The Court erred in not holding that the investigation and determination of the libellant were void and without jurisdiction in that the property libelled was not subject to the jurisdiction of the libellant by reason of the fact that the property libelled herein was subject to a lawful mortgage, pledge or lien, or other right in the nature of security in favor of a person not an enemy or ally of enemy, and hence subject to the provisions of Section 8-*a* of the Trading with the Enemy Act exclusively and not subject to the provisions of the first paragraph of Section 7-*c* of the said Act.

33. The Court erred in not holding that the suit in equity brought by the claimants as set forth in paragraphs 37 and
164 38 was a defense to the libel herein.

34. The Court erred in not holding that the suit in equity brought by the claimants as set forth in paragraphs 37 and 38, taken in connection with the other affirmative allegations contained in paragraphs 9 to 40 inclusive of the answer, was a defense to the libel herein.

35. The Court erred in not holding that the allegations of paragraphs 9 to 40 inclusive of the answer show that the libellant was acting not pursuant to the provisions of the Trading with the Enemy Act but outside of and in abuse of the authority given to him.

36. The Court erred in not holding that the determination of the libellant was the determination solely of a question of law, and, therefore, reviewable by the Court.

37. The Court erred in holding that this proceeding is a mere possessory proceeding and that it is not the province of the Court in such a proceeding to determine the ultimate rights and titles of the parties.

38. The Court erred in not holding that the relief and remedy referred to in the last paragraph of Section 7-c of the Trading with the Enemy Act contemplates and includes the right of a claimant to property to have his right and title tried and adjudicated in a proceeding brought against him under Section 17 of the said Act; and that it is consequently the duty of the court in such a proceeding to adjudicate and determine the ultimate rights
165 and titles of the parties, and, if it be found upon such adjudication that the property sought to be libelled is not of an enemy character, to award the possession of such property to the parties entitled thereto.

39. The Court erred in holding that the rights of the claimants herein are those of mere passive trustees and custodians.

40. The Court erred in not holding that the allegations of paragraphs 9 to 40 inclusive of the answer show that the claimants have title to the property libelled.

41. The Court erred in not holding that the Trading with the Enemy Act could not without contravening the due process clause of the Constitution, authorize the Alien Property Custodian to seize by judicial proceeding property not owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy.

Wherefore, the claimants pray that said decree be reversed and that said District Court for the Southern District of New York be ordered to enter a decree denying the libellant's motion for judgment on the pleadings.

ROOT, CLARK, BUCKNER & HOWLAND,
Solicitors for Claimants, J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees.

Office and Post Office Address, 31 Nassau Street, Borough of Manhattan, New York City.

166 *Stipulation as to Record.*

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, November 24th, 1919.

ROOT, CLARK, BUCKNER & HOWLAND,
Attorneys for Claimants-Appellants.

FRANCIS G. CAFFEY,
United States Attorney for Libellant.

167 *Clerk's Certificate.*

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED GOLD BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify, that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 24th day of November, in the year of Our Lord One Thousand Nine Hundred and Nineteen, and of the Independence of the said United States the One hundred and Forty-fourth.

ALEX GILCHRIST, JR.,
Clerk.

[SEAL.]

29449.

168 United States Circuit Court of Appeals, for the Second Circuit, October Term, 1919.

Argued January 23, 1920. Decided March 3, 1920.

Appeals from the District Court of the United States for the Southern District of New York.

Before Ward, Hough and Manton, Circuit Judges.

No. 157-158-169-170.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

vs.

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, Maturing in 1929, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

vs.

$100,000 PAR VALUE ST. PAUL, KANSAS CITY SHORT LINE RAILROAD Company First Mortgage 4½% Bonds, Maturing in 1941,
169 and Other Property; Edwin G. Merrill, James Speyer and Frank A. Vanderlip, Individually and as Trustees under a Deed of Trust Made by Allianz Insurance Company, Claimants and Appellants.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee.

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities; J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees, etc., Claimants-Appellants.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee,

vs.

$25,000 PAR VALUE CHESAPEAKE & OHIO RAILWAY 4½% CONVERTIBLE BONDS, and Other Bonds, Stocks and Other Securities; J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees, etc., Claimants-Appellants.

170 Francis G. Caffey, United States Attorney, for Libellant.
Perry D. Trafford for Claimants-Appellants Central Union Trust Co. and Edwin G. Merrill, et al.
Emory R. Buckner and H. H. Nordlinger for J. Markham Marshall, et al., Claimants-Appellants.

WARD, C. J.:

Connecticut and Massachusetts require, as do almost all the states, that insurance companies of foreign nations, before doing business in the state, shall deposit funds or securities for the protection of the company's policy holders and creditors in the United States. The exact terms of the statutes need not be stated.

The Munich Re-Insurance Company, a German corporation did deposit a quantity of securities with trustees in conformity with the law of the State of Connecticut.

The Frankfort General Insurance Company and the Allianz Insurance Company, both German Companies, deposited securities with trustees in conformity with the requirements of the law of Massachusetts.

It will not be necessary to set out the terms of the trusts at length; it is enough to say that although the income of the securities is payable to the Companies and they can withdraw them or any of them upon substituting others equally good, and can change the trustees, still the trustees hold the securities in trust to pay the claim of any policy holder or creditor admitted to be due by the Company or established by the claimant in due course of law.

It is apparent that the trustees hold primarily for the benefit of the policy holders and creditors, and secondarily for the benefit of the Companies; but their duties are active, and they are not merely lien holders. The Companies cannot take the securities out
171 of their possession until the rights, absolute or contingent, of all policy holders and creditors in this country are secured, and in the meantime the trustees have the active duty of collecting and paying over the income, investing and reinvesting and paying claims properly proved.

The President, through the Secretary of the Treasury, issued licenses to the Companies in question, not to continue to do business in the United States, but for the purpose of being liquidated.

In November, 1918, the Alien Property Custodian filed libels of

information in the District Court of the United States for the Southern District of New York against the securities in question alleging his demand for the same of the trustees and their refusal, and praying the Court to order the United States Marshal to seize the same and deliver them to him to be held and applied in accordance with law.

The Court made the decrees prayed for and the securities have been seized by the Marshal and delivered to the Alien Custodian. The trustees appeal.

We have no doubt of the right of the Alien Custodian to apply to the Court for aid; if he did not know where the securities were he would evidently be entitled to the aid of the Court to compel the trustees to discover and deliver them. In this case he did know where they were, but it was much more orderly and decent to obtain possession by the aid of the Court than to seize them by violence and the strong hand. Section 17 of the Act of October 6, 1917, 40 Statutes at Large, 411, known as the Trading with the Enemy Act, gives the Court full power in the premises:

"That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or
172 decree of such court as provided in Sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

The material parts of Section 7 (*c*) of the Act as amended November 4, 1918, 40 Statutes at Large, 1020, read:

"(*c*) If the President shall so require any money or other property, including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade-marks, choses in action, the rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President, after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act." • • •

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall

be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States." * * *

The constitutionality of the Act under the war powers of
173 Congress is admitted, the dispute between the parties being as to the construction of it.

The trustees-claimants contend that the Alien Custodian can seize only property belonging wholly to alien enemies; that he stands in their shoes and can get no more than they could themselves.

On the other hand, the Alien Custodian contends that, the President having delegated his authority to him under Section 5 of the Act, he can conclusively determine what property is liable to seizure as being that of an alien enemy.

We agree with the Alien Custodian, and cannot read the perfectly plain language of 7 (*c*) in any other way. As all the facts were known and undisputed they amounted to an investigation by the Alien Custodian. If persons not alien enemies, or allies of alien enemies, were given no means to protect their interests in such property the seizure would be unconstitutional as without due process of law; but they are given such remedies under Section 9:

"That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, may file with the custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States
174 or of the interest therein to which the President shall determine said claimant is entitled: Provided, however, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the District Court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of

the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the Alien Property Custodian or Treasurer of the United States on order of the Court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated * * *."

The Alien Custodian takes possession subject to the rights of innocent persons. Section 12, and amended March 28, 1918, 40 Statutes at Large, 460 provides:

175 "The Alien Property Custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: * * *"

It is obviously of the utmost importance that in time of war enemy property should be put into the possession of government; on the other hand, no great harm can come to the interests of innocent persons since the possession and management of the property by the Alien Custodian is under the control of the President by regulation and of the courts by decree. Policy holders or creditors may proceed to protect their rights under Section 9, or the trustees may do so for them.

We do not think that the trustees-claimants are mere lien holders under Section 8 of the Act and as such to be entitled to retain possession of the property in question; they are as stated above, trustees with active duties, and not lien holders within the meaning of the section at all. It clearly protects the lien holders and especially the vast amount of loans against collateral, any interference with which would cause great injury to banks, trust companies and stock brokers, and produce disturbance of business generally.

The decrees are affirmed.

Hough, C. J. concurs in result.

176 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit Held at the Court Rooms in the Post Office Building in the City of New York, on the 13th day of March, one thousand nine hundred and twenty.

Present: Hon. Henry G. Ward, Hon. Charles M. Hough, Hon. Martin T. Manton, Circuit Judges.

FRANCIS P. GARVAN, as Alien Property Custodian, etc., Libellant-Appellee,

v.

$50,000 PAR VALUE U. S. GOVERNMENT 4% REGISTERED BONDS, etc., and Other Securities; J. Markham Marshall et al., as Executors, etc., Claimants-Appellants.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed.

H. G. W.
C. M. H.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

177 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. F. P. Garvan v. $50,000 Bonds. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 16, 1920. William Parkin, Clerk.

178 United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities; J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees, etc., Claimants-Appellants.

Petition for Writ of Error.

To the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes the Claimants-Appellants, by their attorneys, and complain that in the record of the proceedings and also in the rendition of the order for mandate of the United States Circuit Court of Appeals for the Second Circuit, sitting in New York City, in the State of New York, in the above styled and numbered cause on the 16th day of March, A. D. 1920, affirming the decree of the United States District Court for the Southern District of New York in said cause, a manifest error has intervened to the great damage of the petitioners; that the jurisdiction of the District Court of the United States for the Southern District of New York in the said cause depended upon the fact that it arose under the laws of the United States, and that the case did not arise under the patent laws, under the trademark laws, under the copy-right laws, under the revenue laws, nor under the criminal laws of the United States, nor was the said case an admiralty case, nor was the cause one arising under

179 "An Act to establish a uniform system of bankruptcy throughout the United States," nor one arising under "An Act relating to the liability of common carriers by railroad to their employees in certain cases," nor one arising under "An Act to promote the safety of employees and travelers upon railroad by limiting the hours of service of employees thereon," nor one arising under "An Act — promote the safety of employees and travelers upon railroad by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," nor one arising under any amendment or supplement to any of the afore-mentioned Acts; that the amount involved in the case exceeds the sum of one thousand dollars ($1,000), besides costs, and that this is not a case where the judgments and decrees of the Circuit Court of Appeals is made final.

Wherefore petitioners pray for an allowance of the writ of error to the end that the cause may be carried to the Supreme Court of the United States, and the petitioners pray for such other process as is

necessary to perfect the writ of error prayed for to the end that the error therein may be corrected.

Dated, May 24, 1920.

ROOT, CLARK, BUCKNER & HOWLAND,
Proctors for Claimants-Appellants.

Office & P. O. Address: 31 Nassau Street, Borough of Manhattan, New York, N. Y.

180 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Francis P. Garvan, as Alien Property Custodian, Libellant-Appellee, against $50,000 Par Value United States Government, etc.; J. Markham Marshall et al., as Trustees, etc., Claimants-Appellants. Copy. Petition for Writ of Error. Root, Clark, Buckner & Howland, Proctors for Claimants-Appellants, 31 Nassau Street, Borough of Manhattan, New York City. Filed May 26, 1920.

181 United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian,
Libellant-Appellee,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED BONDS, Maturing in 1925, and Other Bonds, Stocks and Other Securities; J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees, etc., Claimants-Appellants.

Order Allowing Writ of Error.

The claimants-appellants having filed their petition for a writ of error from the Supreme Court of the United States to this Court, to review the order for mandate of this Court made and entered on March 16th, 1920, it is

Ordered that the said writ of error of said claimants-appellants to review said order for mandate, be, and the same is hereby allowed; and it is

Further ordered that the claimants-appellants file a bond in the sum of Five Hundred dollars on or before the 26th day of May, 1920, the same to act as a supersedeas bond and also as a bond for costs.

Dated May 24, 1920.

H. G. WARD,
United States Circuit Judge.

182 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Francis P. Garvan, as Alien Property Custodian, Libellant-Appellee, against $50,000 Par Value United States Government, etc.; J. Markham Marshall, et al., as Trustees,

etc., Claimants-Appellants. Copy. Order Allowing Writ of Error. Root, Clark, Buckner & Howland, Proctors for Claimants-Appellants. 31 Nassau Street, Borough of Manhattan, New York City. Filed May 26, 1920.

183 *Assignment of Errors.*

United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee,

against

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED BONDS Maturing in 1925, and Other Bonds, Stocks and Other Securities; J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees, etc., Claimants-Appellants.

Now come the claimants in the above entitled cause and file the following Assignment of Errors, upon which they will rely upon their prosecution of the appeal in the above entitled cause from the order for mandate of this Honorable Court, made and entered on March 16th, 1920.

1. The Court erred in affirming the decree of the District Court of the United States for the Southern District of New York, made and entered on October 6th, 1919, granting the libellant a decree on the pleadings.

2. The Court erred in not reversing the decree of the District Court of the United States for the Southern District of New York, made and entered on October 6th, 1919, granting the libellant a decree on the pleadings.

3. The Court erred in not holding that the libel of information failed to state a cause of action upon the ground that it contained no allegation that the property libelled was money or other property or a right or claim of any character or description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a
184 license granted by the President, within the meaning of Section 7-*c* of the Trading with the Enemy Act.

4. The Court erred in holding that the knowledge by the libellant of all the facts was the equivalent to the investigation by him required by Section 7-*c* of the Trading with the Enemy Act.

5. The Court erred in not holding that the denial (contained in paragraph 2 of the answer) that the determination of the libellant was made after investigation was a denial of an allegation essential to the libellant's cause of action and therefore a sufficient ground for denying a decree on the pleadings.

6. The Court erred in not holding that the denial (contained in

paragraph 2 of the answer) that the determination of the libellant was made pursuant to the authority of the Trading with the Enemy Act was a denial of an allegation essential to the libellant's cause of action and, therefore, a sufficient ground for denying a decree on the pleadings.

7. The Court erred in not holding that the denial (contained in paragraph 3 of the answer) that the requirement of the libellant was made after investigation was a denial of an allegation essential to the libellant's cause of action and, therefore, a sufficient ground for denying a decree on the pleadings.

8. The Court erred in not holding that paragraphs 1 to 8, inclusive, of the answer contain denials of essential allegations of the complaint, and are, therefore, a sufficient ground for denying a decree on the pleadings.

9. The Court erred in not holding that the allegations of paragraphs 9 to 40, inclusive, of the answer set forth a sufficient
185 affirmative defense to the libel.

10. The Court erred in failing to hold that the allegations of paragraphs 9 to 40, inclusive, of the answer set forth a sufficient affirmative defense in that they affirmatively establish that the property libelled was not money or other property or a right or claim of any character or description owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President, within the meaning of Section 7*c* of the Trading with the Enemy Act.

11. The Court erred in refusing to hold that the Alien Property Custodian can seize only such interest in property as is vested in alien enemies; that he stands in their shoes and can get no more than they could themselves.

12. The Court erred in holding that the regulations of the Insurance Commissioner of the State of Connecticut, as set forth in paragraphs 21 and 22 of the answer, did not constitute a sufficient affirmative defense to the libel herein.

13. The Court erred in holding that the regulations of the Insurance Commissioner of the State of Connecticut, as set forth in paragraphs 21 and 22 of the answer, taken in connection with the other affirmative allegations contained in paragraphs 9 to 40, inclusive, of the answer, did not constitute a sufficient affirmative defense to the libel herein.

14. The Court erred in not holding that the determination contained in the demand of the Alien Property Custodian dated October 28, 1918, a copy of which is annexed to the answer as Exhibit 4, which said demand is set forth in paragraph 24 of
186 the answer, is inconsistent with the alleged later determination of the libellant upon which the libel is based, and

precluded the said libellant from validly making the determination set forth in paragraph 2 of the libel herein.

15. The Court erred in not holding that, in order to comply with the provisions of Section 7*c* of the Trading with the Enemy Act requiring an investigation by the Alien Property Custodian, the Custodian must give notice of hearing to the parties in interest and an opportunity to such parties to defend and protect their rights.

16. The Court erred in not holding that the Trading with the Enemy Act could not, without contravening the due process clause of the Constitution, provide that the Custodian could determine that property is of an enemy character without giving notice of hearing to the parties in interest and an opportunity to such parties to defend and protect their rights.

17. The Court erred in not holding that the allegations of paragraph 32 of the answer were a sufficient affirmative defense to the libel herein, on the ground that such allegations affirmatively show that libellant did not comply with the true intent and meaning of the provisions of Section 7*c* of the Trading with the Enemy Act requiring investigation on his part as a condition precedent to a demand or requirement under the Act.

18. The Court erred in not holding that the allegation of paragraph 32 of the answer, taken in connection with the other affirmative allegations contained in paragraphs 9 to 40, inclusive, of the answer, were a sufficient affirmative defense to the libel herein, on the ground that such allegations affirmatively show that
187 libellant did not comply with the true intent and meaning of the provisions of Section 7*c* of the Trading with the Enemy Act requiring investigation on his part as a condition precedent to a demand or requirement under the Act.

19. The Court erred in not holding that the alleged determination by the Alien Property Custodian was shown by the allegations of the answer to be arbitrary, in excess of the libellant's authority and without any evidence in its support, and hence insufficient to comply with the requirements of the Trading with the Enemy Act.

20. The Court erred in holding that the allegations of the answer showed that the Alien Property Custodian must have made such investigation as was contemplated by the Trading with the Enemy Act.

21. The Court erred in not holding that the investigation contemplated by Section 7*c* of the Trading with the Enemy Act includes investigation not only of the questions of fact involved, but also of the questions of law involved, and that consequently the mere fact that the libellant is alleged to have known all the pertinent facts does not show that he has made such investigation as is contemplated by Section 7*c* of the Trading with the Enemy Act.

22. The Court erred in holding that in determining the sufficiency of the answer herein the denials in the said answer could be deemed in any way controlled, qualified, modified or affected by any other allegations set up in the answer by way of an affirmative defense; and in particular erred in holding that the denial
(contained in paragraphs 2 and 3 of the answer) that the
188 libellant had made such investigation as was contemplated by Section 7*c* of the Trading with the Enemy Act is in any way controlled, modified or affected by any of the allegations in the said answer by way of affirmative defense, or by any of the allegations contained in paragraphs 9 to 40, inclusive, of the said answer, or in particular by way of the allegations contained in paragraphs 34 and 35 of said answer.

23. The Court erred in not holding that the investigation and determination of the libellant were void and without jurisdiction, in that the said libellant had no jurisdiction of the property libelled because it was not money or other property or right or claim of any character or description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, any enemy or ally of enemy not holding a license granted by the President.

24. The Court erred in not holding that the enemy interest in the property libelled herein was a beneficial interest in a trust within the meaning of the third paragraph of Section 7*c* of the Trading with the Enemy Act, and subject to the provisions of the said paragraph exclusively, and not subject to the provisions of the first paragraph of Section 7*c* of the Trading with the Enemy Act.

25. The Court erred in not holding that the property libelled herein was subject to a lawful mortgage, pledge or lien, or other right in the nature of security in favor of a person not an enemy or ally of enemy, and hence subject to the provisions of Section 8*a* of the Trading with the Enemy Act exclusively, and not subject to the provisions of the first paragraph of Section 7*c* of the said Act.

189 26. The Court erred in not holding that the investigation and determination of the libellant were void and without jurisdiction, in that the property libelled was not subject to the jurisdiction of the libellant by reason of the fact that the enemy interest in the property libelled herein was a beneficial interest in trust within the meaning of the third paragraph of Section 7*c* of the Trading with the Enemy Act, and subject to the provisions of the said paragraph exclusively, and not subject to the provisions of the first paragraph of Section 7*c* of the Trading with the Enemy Act.

27. The Court erred in not holding that the investigation and determination of the libellant were void and without jurisdiction, in that the property libelled was not subject to the jurisdiction of the libellant by reason of the fact that the property libelled herein was subject to a lawful mortgage, pledge or lien, or other right in the nature of security in favor of a person not an enemy or ally of enemy, and hence subject to the provisions of Section 8*a* of the Trading

with the Enemy Act exclusively, and not subject to the provisions of the first paragraph of Section 7*c* of the said Act.

28. The Court erred in not holding that the suit in equity brought by the claimants as set forth in paragraphs 37 and 38 was a defense to the libel herein.

29. The Court erred in not holding that the suit in equity brought by the claimants as set forth in paragraphs 37 and 38, taken in connection with the other affirmative allegations contained in paragraphs 9 to 40, inclusive, of the answer, was a defense to the libel herein.

190 30. The Court erred in not holding that the allegations of pargraphs 9 to 40, inclusive, of the answer, show that the libellant was acting, not pursuant to the provisions of the Trading with the Enemy Act, but outside of and in abuse of the authority given to him.

31. The Court erred in not holding that the determination of the libellant was the determination solely of a question of law, and, therefore, reviewable by the Court.

32. The Court erred in holding that the determination of the Alien Property Custodian upon the undisputed facts of this case was conclusive upon the Court.

33. The Court erred in not holding that it was its function in the present proceeding to determine the ultimate rights and titles of the parties.

34. The Court erred in not holding that the relief and remedy referred to in the last paragraph of Section 7*c* of the Trading with the Enemy Act contemplates and includes the right of a claimant to property to have his right and title tried and adjudicated in a proceeding brought against him under Section 17 of the said Act; and that it is consequently the duty of the Court in such a proceeding to adjudicate and determine the ultimate rights and titles of the parties, and, if it be found upon such adjudication that the property sought to be libelled is not of an enemy character, to award the possession of such property to the parties entitled thereto.

35. The Court erred in not holding that the allegations of paragraphs 9 to 40, inclusive, of the answer show that the claimants have title to the property libelled.

191 36. The Court erred in not holding that the Trading with the Enemy Act could not, without contravening the due process clause of the Constitution, authorize the Alien Property Custodian to seize by judicial proceeding property not owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy.

Wherefore, the claimants pray that the said order for mandate, as well as the decree of the District Court, be reversed and that the

said Circuit Court of Appeals for the Second Circuit be ordered to enter a decree reversing the decree of the District Court of the United States for the Southern District of New York, granting the libellants' motion for a decree on the pleadings.

ROOT, CLARK, BUCKNER & HOWLAND,
Proctors for Claimants J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees, etc.

Office & P. O. Address: 31 Nassau Street, Borough of Manhattan, New York, N. Y.

192 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Francis P. Garvan, as Alien Property Custodian, Libellant-Appellee, against $50,000 Par Value United States Government, etc.; J. Markham Marshall, et al., as Trustees, etc., Claimants-Appellants. Copy. Assignment of Errors. Root, Clark, Buckner & Howland, Proctors for Claimants-Appellants, 31 Nassau Street, Borough of Manhattan, New York City. Filed May 26, 1920.

193 New York Office, #16 Liberty Street.

United States Circuit Court of Appeals, Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee,

against

FIFTY THOUSAND DOLLARS PAR VALUE UNITED STATES GOVERNMENT, 4% REGISTERED BONDS, Maturing in 1925, and Other Bonds, Stocks, and Other Securities; J. Markham Marshall, Walter T. Rosen, and Rudolph Metz, as Trustees, etc., Claimants, Appellants.

Know all men by these presents, That we, J. Markham Marshall, Walter T. Rosen, and Rudolph Metz, as Trustees, etc., as principals and Massachusetts Bonding and Insurance Company, a corporation organized and existing under and by virtue of the Laws of the Commonwealth of Massachusetts and having an office and place of business at #16 Liberty Street, Borough of Manhattan, City, County and State of New York, as surety are held and firmly bound unto Francis P. Garvan, as Alien Property Custodian in the sum of Five Hundred and 00/100 ($500.) Dollars, to be paid to the said Francis P. Garvan, as Alien Property Custodian, for the payment of which, well and truly to be made, the said principals and surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our Seals and dated the 25th day of May, 1920.

Whereas, the above named J. Markham Marshall, Walter T. Rosen and Rudolph Metz, as Trustees, etc., have prosecuted a writ of error

to the Supreme Court of the United States to reverse the order mad in the above entitled suit by the United States Circuit Court of A peals for the Second Circuit.

Now, therefore, the condition of this obligation is such that th above named J. Markham Marshall, Walter T. Rosen and Rudolp Metz, as Trustees, etc., shall prosecute their writ to effect and, if the fail to make their plea good, shall answer all costs then this oblig tion shall be void; otherwise the same shall be and remain in fu force and virtue.

WALTER T. ROSEN,
RUDOLPH METZ,
J. MARKHAM MARSHALL,
As Trustees.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[SEAL.] By HARVEY SELF,
Resident Secretary.

Attest:
EDWARD J. HALLIGAN,
Attorney in Fact.

194 Justification or Acknowledgment Federal Business.

Surety Department.

Massachusetts Bonding and Insurance Company,

Home Office, Boston, Massachusetts.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

Personally appeared before me, Harvey Self, on this 25th day May, one thousand nine hundred and twenty, known to me to be t Resident Secretary of Massachusetts Bonding and Insurance Co pany, the Corporation described in and which executed the annex bond of J. Markham Marshall, et al., as surety thereon, and wh being by me duly sworn, deposes and says that he resides in the C of New York in the State of New York; that he is the Resident S retary of said Massachusetts Bonding and Insurance Company, a knows the corporate seal thereof; that said Company is duly a legally incorporated under the laws of the Commonwealth of Mas chusetts; that said Company has complied with the provisions of t Act of Congress of August 13, 1894, allowing certain corporations be accepted as surety on bonds; that the seal affixed to the annex bond of J. Markham Marshall, et al., is the corporate seal of s Massachusetts Bonding and Insurance Company, and was there affixed by order and authority of the Board of Directors of said Co pany; and that he signed his name thereto by like order and auth ity as Resident Secretary of said Company; and that he is acquain

with Edward J. Halligan and knows him to be the Attorney-in-fact of said Company; and that the signature of said Edward J. Halligan subscribed to said bond is in the genuine handwriting of said Edward J. Halligan and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company unencumbered and liable to execution, exceed its claims, debts, and liabilities, of every nature whatsoever, by more than the sum of One Million and 00/100 Dollars.

Deponent further says that George B. Covington, residing at New York, in the State of New York, has been duly appointed as the agent of said Company to accept service of process against said Company in the judicial district wherein this bond is given and is authorized to enter an appearance in behalf of said Company in any action, suit, or proceeding brought against it in said judicial district.

HARVEY SELF.

Sworn to, acknowledged before me, and subscribed in my presence this 25th day of May, 1920.

[SEAL.] CATHERINE J. WALL,
Notary Public.

Notary Public Bx. Co. No. 3, Reg. No. 2245, N. Y. Co. No. 2241, 328.

195 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Francis P. Garvan, as Alien Property Custodian, Libellant-Appellee, against Fifty Thousand Dollars par value United States Government, 4% Registered Bond- Maturing in 1925, and Other Bonds, Stocks, and Other Securities. J. Markham Marshall, Walter T. Rosen, and Rudolph Metz, as Trustees, etc. Surety Massachusetts Bonding and Insurance Company, 84 William Street, New York City. Approved as to Form and Sufficiency of Surety. Date May 26, 1920. H. G. Ward, U. S. C. J. Filed May 26, 1920.

196 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 195 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Francis P. Garvan, as Alien Property Custodian, against $50,000 Par Value U. S. Govt. 4% Registered Bonds, etc., as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 1st day of June in the year of our Lord One Thousand Nine Hundred and Twenty

and of the Independence of the said United States the One Hundred and forty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

197 Supreme Court of the United States.

J. MARKHAM MARSHALL, WALTER T. ROSEN and RUDOLF METZ, as Trustees under a Certain Deed of Trust, Plaintiffs in *Error*,

against

FRANCIS P. GARVAN, as Alien Property Custodian, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the Circuit Court of Appeals of the United States for the Second Circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the United States Circuit Court of Appeals, before you, or some of you, in an action entitled Garvan v. $50,000 par value bonds, etc., between Francis P. Garvan, as Alien Property Custodian, libellant-appellee, and J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees under a certain Deed of Trust, claimants-appellants, a manifest error hath happened, to the great damage of the said J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees under the said Deed of Trust, as is said and appears by their complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days

198 from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 24th day of May, in the year of our Lord

one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

199 [Endorsed:] Supreme Court of the United States J. Markham Marshall, et al., as Trustees under a certain Deed of Trust, Plaintiffs in Error, against Francis P. Garvan, as Alien Property Custodian, Defendant in Error. Writ of Error. Root, Clark, Buckner & Howland, Attorneys for Plaintiffs in Error, 31 Nassau street, Borough of Manhattan, New York City. A copy of the within paper has been this day received at this office. May 24, 1920. Francis G. Caffey, U. S. Attorney.

200 Supreme Court of the United States.

J. MARKHAM MARSHALL, WALTER T. ROSEN and RUDOLF METZ, as Trustees under a Certain Deed of Trust, Plaintiffs in Error,

against

FRANCIS P. GARVAN, as Alien Property Custodian, Defendant in Error.

Citation.

By the Honorable One of the Judges of the United States Circuit Court of Appeals for the Second Circuit, to Francis P. Garvan, as Alien Property Custodian, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held in the City of Washington, District of Columbia, on the 22nd day of June A. D., 1920, pursuant to an order allowing a writ of error, filed and entered in the Clerk's office of the United States Circuit Court of Appeals for the Second Circuit, to review an order for mandate, signed, filed and entered on the 16th day of March, 1920, in that certain suit entitled Garvan v. $50,000 par value bonds, etc., wherein J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees under a certain Deed of Trust, are Claimants-Appellants, and you are Libellant-Appellee, to show cause, if any *they* be, why the order and decree rendered against the said claimants-appellants as in said order allowing a writ of error mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

201 Given under my hand at the Borough of Manhattan, in the City of New York, in the Southern District of New York, Second Circuit, this 24th day of May, in the year of

our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-third.

H. G. WARD,
Judge of the United States Circuit Court of Appeals for the Second Circuit.

202 [Endorsed:] Supreme Court of the United States. J. Markham Marshall, et al., as Trustees under a certain Deed of Trust, Plaintiffs in Error, against Francis P. Garvan, as Alien Property Custodian, Defendant in Error. Citation. Root, Clark, Buckner & Howland, Attorneys for Plaintiffs in Error. 31 Nassau Street, Borough of Manhattan, New York City. A copy of the within paper has been this day received at this office. May 24, 1920. Francis G. Caffey, U. S. Attorney.

Endorsed on cover: File No. 27,751. U. S. Circuit Court Appeals, 2d Circuit. Term No. 394. J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as trustees, &c., plaintiffs in error, vs. Francis P. Garvan, as alien property custodian. Filed June 14th, 1920. File No. 27,751.